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Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE KAREN H. SPENCER,
Petitioner

V.

DAVID CHANDLER, EDWARD N. KRAMER, III,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF
MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI

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KAREN H. SPENCER

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER MISSISSIPPI HAS VIOLATED THE FIRST AMENDMENT AND/OR DUE PROCESS CLAUSE IN APPLYING SANCTIONS AGAINST AN ATTORNEY FOR FILING FRIVOLOUS OR VEXATIOUS PLEADINGS EVEN THOUGH THE PLEADINGS WERE NEITHER OBJECTIVELY FRIVOLOUS NOR SUBJECTIVELY INTENDED TO HARASS THE OTHER SIDE.

II. WHETHER SPENCER'S CONSTITUTIONAL RIGHTS WERE DENIED WHEN SHE WAS TRIED IN SECRET FOR CRIMINAL CONTEMPT AND WITHOUT NOTICE OF THE LEGAL ELEMENTS OF THE OFFENSE OR THAT SHE WAS EVEN BEING CHARGED CRIMINALLY AND/OR WAS CONVICTED OF CRIMINAL CONTEMPT BASED ONLY ON A FINDING OF SIMPLE NEGLIGENCE.

LIST OF THE PARTIES TO THE PROCEEDINGS BELOW

Donna Chandler
Defendant/Appellant Ms courts

David Chandler
Plaintiff/Appellee Ms Courts

Sundra Girard
Intervenor/Appellant Ms Courts

Lawrence Primeaux
Joseph A. Kieronski, Jr.
Former trial counsel for Donna

Karen H. Spencer
Appellant and former trial counsel for Defendant Donna Chandler and Intervenor Sundra Girard

Cynthia Speetjens
Julie Ann Epps
Counsel for Karen H. Spencer at Trial and Epps on appeal

Stewart Parrish
Counsel for David Chandler

James W. Craig
Jane E. Tucker
Appellate counsel for Donna Chandler and Sundra Girard

Sarah P. Springer
Chancellor and Trial judge

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OPINIONS BELOW

On June 19, 2008, the Mississippi Supreme Court denied Karen H. Spencer's motion for rehearing, withdrew its previous opinion and substituted a new opinion affirming sanctions imposed against Spencer, an attorney, for contempt and for filing motions which the court found to be unfounded and vexatious. Appendix A. That opinion affirmed in part and reversed in part a decision by Chancery Court Judge Sarah P. Springer. *See*, Appendix B.

JURISDICTION AND CERTIFICATION

This Court has jurisdiction under Title 28 U.S.C. §1257, which provides that this Court may grant a petition for writ of certiorari by any party where any title, right, privilege, or immunity is specially set up or claimed under the Constitution [of] the United States. 28 U.S.C. 2403 may apply, and this petition has been served on Jim Hood, Attorney General of Mississippi.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const., Amend. I:

> Congress shall make no law . . . abridging the freedom of speech, or . . . [the right] to petition the Government for a redress of grievances.

2. U.S. Const., Amend VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense

3. U.S. Const., Amendment XIV:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. Miss. Code Ann. §43-21-301(3) provides that emergency custody removals are authorized only:

i. When a child is endangered or any person would be endangered by the child; or
ii. To insure the child's attendance in court at such time as required; or
iii. When a parent . . . is not available to provide for the care and supervision of the child; and
iv. There is no reasonable alternative to custody [emphasis

added].

5. Miss. Code Ann. 43-21-307:

The judge or his designee may authorize the temporary custody of a child taken into custody for a period of not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays if the judge or his designee finds there are grounds to issue a custody order as defined in Section 43- 21-301 and such custody order complies with the detention requirements provided in Section 43-21-301(6).

6. Miss. Code Ann. §11-55-(1) (LAA):

[T]he court shall award . . . reasonable attorney's fees and costs against any party or attorney if the court . . . finds that an attorney . . . asserted any claim or defense, that is without substantial justification, or . . . was interposed for delay or harassement . . . .

7. Rule 11 Miss.R.Civ.P, provides for sanctions against an attorney:

[i]f any party files a motion or pleading which, in the opinion of the court, is frivolous or is filed for the purpose of harassment or delay . . . .

STATEMENT OF THE CASE AND

PLACE WHERE ISSUES RAISED BELOW

Karen H. Spencer, attorney, first raised her client's constitutional rights to due process numerous times in the trial court, including her argument on her Amended Second Motion to Return Custody to Mother on November 7, 2005 at T.118: "Mrs. Spencer: . . . [T]he Court did not conduct a hearing. The children's due process rights were not met. The mother's due process rights were not complied with." Again at T. 120: "Mrs. Spencer: So since September 20th, we have gotten additional information. Now, it is my opinion that the Court had sufficient documentary evidence before it to return the children on September 20. But the Court made a – did not do that. And that's fine. But today we have additional evidence. And because of the -- the abuse of my client's constitutional rights and the failure to comply with the children's . . . ." Again at Page 121 lines 1-6: "Mrs. Spencer: Constitutional rights, this court should now take steps to protect these children. Here we are --- we have that --- hearing set for September 20th . Everyone was ready except the guardian ad litem. You set - the Court – the matter for October 6th. . . ." Again: "Mrs. Spencer: There are very serious constitutional issues pending before this Court that I agree usually are not present". T.119.

Regarding Spencer's constitutional rights, Spencer argued before the trial court that her constitutional rights as well as her client's were at issue both in the contempt proceedings and on the issues regarding enforced confidentiality. She argued that the gag order should be lifted on the contempt matters because of the proceedings against her

thereby asserting her right to a public trial. T.178-80, 190.

Spencer additionally raised the constitutional issues before the trial court in her motions to reconsider sanctions, recusal and in her Response to Motion for Awarding of Attorneys' Fees and Costs to the Plaintiff. CP.2306,2323,2370-72,2429-53,2541,2574. All of Spencer's constitutional claims were denied by the Chancellor. CP. 2662,2678.

Spencer raised the issues again throughout her briefs in the Supreme Court and in her motion for rehearing in the Supreme Court. The Mississippi Supreme Court did not discuss the constitutional issues involving the First Amendment.

As to the Due process claims involving the contempt petition, the Court said: "We find that it is not a violation of the Due Process Clause of the Fourteenth Amendment to hold contempt hearings in youth court abuse proceedings out of the public eye under these circumstances." *In re Spencer,* 985 So.2d at 341. The Court held that Spencer had waived notice by appearing at the contempt hearing. *Id.*

Spencer was sanctioned and found in contempt as a result of her representation of a mother in a child custody case. The mother believed her daughter had been sexually abused by the father and had withheld visitation. Consequently, the father moved to cite the mother for contempt and asked for full custody.

Based on a report filed by the guardian ad litem which the mother had no opportunity to refute which characterized her allegations of child abuse as manipulative and false, the Chancellor, without notice or a hearing, took custody of the two children away from the mother and placed them with the

welfare department for over three months so that the GAL would have easy access to them and could interview them for a report to the Court on the merits of which parent should ultimately have custody.

Spencer, who was hired after order taking the Mother's children away, filed several meritorious motions requesting that she be granted the adversary hearing which the Chancellor is required to hold within 48 hours whenever children are removed without a prior adversary hearing from the custodial parent. These motions were opposed by counsel for the father and the GAL although neither the statute nor the constitution permit removal of a child without due process of law which includes an adversary hearing. After the GAL failed on numerous occasions with court-imposed deadlines to file his report, Spencer filed a request to have the GAL replaced. She also filed two duplicative motions to lift a gag order imposed on the parties which, among other things, kept her from giving medical records and other records substantiating the abuse to law enforcement officials for possible prosecution.

As a result of her attempts to protect the constitutional and statutory rights of the mother and her children in the face of the Chancellor's refusal to provide a hearing, Spencer found herself the subject of sanctions for attorneys fees to the GAL and counsel opposite even though her motions for a hearing, to remove the GAL and to lift the gag order were not even arguably legally frivolous.

The offending pleadings ultimately affirmed by the Supreme Court were:

1. Second Motion to Return Custody to Mother (Filed 9/27/2005—CP.756-1070);

2. Amended Second Motion to Return Custody to the Mother (Filed 10/12/05—CP.1093-1402);
3. Motion to Require Guardian Ad Litem to File Report Returning Custody to Mother (Filed 10/19/2006—CP.1406-09);
4. Response to Kramer's Motion for Contempt and Counter Motion to Disqualify and Remove Guardian ad Litem (Filed 2/5/2006--CP.1642-56);
5. Two Motions to Lift the Gag Order (Filed 12/05/06--CP1480-81); 2/10/06—CP.1666-67).[1] *In Re Spencer*, 985 So.2d at 339.

The main reasons given by the Mississippi Supreme Court for affirming the fee sanctions were that Spencer's motions were lengthy because of the exhibits she attached to support them, and counsel and the GAL, therefore, felt harassed and vexed when they had to defend what the Mississippi Supreme Court had previously in *Comm'n on Judicial Performance v. Perdue*, 853 So.2d 85 (Miss. 2003) characterized as a frivolous legal position.

In that case, the Court held that the mother was entitled to an immediate adversary hearing after Judge Perdue took her children at the request of counsel opposite. The Court imposed sanctions against Perdue for denying that hearing characterizing the Judge's legal position and that of

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[1] Because of space limitations, Spencer will discuss the reasons for filing these pleadings in her factual recitation because the events of the case demonstrate her reasons for filing the motions and therefore show why they were legally non-frivolous and factually appropriate. The offending motions will be in bold type.

counsel opposite as "frivolous."

The Chancellor also found that the exhibits Spencer attached to the motions contained medical and other records of the child which the Chancellor felt should not have been attached to the motions because they were "confidential" and, therefore, should have been presented in evidence rather than attached to a motion. This was so despite the fact that the court records of this case were sealed as a matter of law because the case involved child abuse which made them confidential by virtue of the confidentiality provisions of the Youth Court Act. Furthermore, the Chancellor had also entered a "gag order" sealing the court file. Consequently, it makes little sense to say that Spencer should be sanctioned for introducing records into a confidential court proceeding by attaching them to motions rather than offering them as exhibits at trial or a motion hearing since in either way the records would be in the court file. In either event, the records were confidential. Finally, despite the Chancellor's fact-finding, the record shows that the attachments were tailored to the individual motions and therefore were not "unnecessary" because they aided in a clear understanding of the motion in question as Spencer will further show.

In addition, Spencer found herself convicted of criminal contempt for negligently failing to appear in court even though her "trial" was prosecuted by counsel opposite; she had no notice she was being tried for failing to appear in court or for a criminal contempt; and though she had no public trial.

EVENTS PRIOR TO AUGUST 19, 2005 WHEN SPENCER BECAME INVOLVED:

Donna and David Chandler were divorced in 2000, in the Chancery Court of Clarke County. By agreement of the parties, the Court gave each joint custody of the two minor children, K and M. Donna had physical custody and final authority for their health, education and welfare. David had liberal visitation. CP.55-68. The arrangement was amicable until July of 2004, when K, who was then 9 years old, returned from visitation and gave Donna a note reading: "For Mama's eyes only. Mama--my private is hurting real BAD!!" The note included a drawing of what appeared to be an erect penis. RE139.

Concerned, Donna contacted a psychologist who recommended that K be examined by Tammy Henderson, M.D., a family practitioner specializing in the treatment of children. Henderson found inflammation and scarring, consistent with sexual abuse. K's hymen was no longer intact. With no prompting, K volunteered that if her daddy did it, she wouldn't know because she slept so hard. Henderson thought this was K's oblique way of saying her father had hurt her. T.533-654.

Donna subsequently had K examined at the University Medical Center Rape and Crisis Center in Jackson [UMC]. *See, Id.* CP.287-88; RE136-39. UMC's findings were inconclusive as to the reason for K's injuries but did not rule out sexual abuse. UMC, therefore, referred the case to the Department of Health and Human Services [DHS] for further investigation. RE144. DHS did not complete its investigation because on August 30, 2004, Donna and the children moved to Plano, Texas, a suburb of Dallas, where Donna had a teaching job.

In July and August of 2004, Donna Moore, on behalf of authorities, conducted four forensic interviews with K who identified her father as

having abused her. Moore, however, was unable to say conclusively if K had been abused because K could be "blocking" the abuse or there could be "transference of feelings about father from mother to child." T.1248, Ex.43.

In October, Donna enrolled K in the Collin County Child Advocacy Treatment Center [CCCAC], a nationally known facility focusing on treatment of children who may have been the victims of sexual assault. Fearing further abuse in David's home, she refused to allow David to visit with the children. On October 29, David moved to cite Donna for contempt and to modify custody based on Donna's move and her refusal to allow him unsupervised visitation.

Counseling notes from CCCAC show that K repeatedly and consistently identified her father as the perpetrator. Ex.8, 2/2/2006, CP.619,662, RE160-62.

As required by law, CCCAC reported K's allegations to law enforcement. In late 2004 or early 2005, the Texas Department of Family and Protective Services (TDFPS) began an investigation and conducted forensic interviews of K who said that her father came to her room several times and scratched her "private part" with his fingernail and touched the "fold part" of her private and that her Daddy "did something with his pee pee." Ex.3,p.45; RE163-64, Ex.8, 8/15/05; CP.619.

In the meantime, on February 7, 2005, the Chancellor appointed Edward N. Kramer, III, Guardian Ad Litem [GAL]. She then ordered Donna to return the children to Mississippi during March spring break so that Kramer could visit with the children and so that David could have supervised visitation with the children. CP.104,106.

March 21st Donna brought the children to

Mississippi. In March the Clarke County district attorney presented the case to the grand jury which no-billed the case against David—possibly because the GAL presented only a few of the records to investigators, omitting such important information as Dr. Henderson's report that K had been sexually abused and reports from CCCAC.

The children met with Kramer for the first time for about one or two hours. On March 24th, after K returned from a visit with her father, Kramer noticed K was visibly upset. When asked why, she refused to talk with Kramer about it. T.332. Later that night, she became hysterical and had to be taken to the emergency room at Watkins Hospital in Quitman, Mississippi. T.334; CP.700-705, Ex.9.

Kramer went to the hospital. He terminated visitation after K told him "her father had come into the bedroom at his house, and 'had touched her in the private parts'" CP.250,T.339,385. Donna returned the children to Texas.

In April after extensive investigation, TDFPS found there was reason to believe that David had sexually assaulted K and sent letters to Donna and David so advising them and informing Donna of her liability if she allowed David to harm K. Ex-23, RE140,164,169. Ex-3-ID 2/3/2006, pp.42,48.

Notwithstanding TDFPS's conclusions, in July of 2005, **without a hearing**, the Chancellor entered an order allowing David visitation with the children beginning July, 2005, supervised only by David's parents or his wife. The children would spend the night with David's parents. CP.143,259.

CCCAC counseling notes document that when the counselors told K she would see her father and would have to spend the night with her grandparents, she became hysterical and refused to

leave. She said she would have to stay up all night. Counselors tried to allay her fears explaining what she should do if she felt unsafe. RE161.

Concerned first of all about K's reaction and further concerned that the visitation would be supervised only by David's parents or wife, who did not believe the abuse occurred, Donna sought a protective order in Texas where she and the children had been living for almost a year. CP.169,176. While the emergency protective order was in place, Donna did not comply with the July visitation order.

Donna's non-compliance, as well as her attempt to seek relief in Texas, angered the Chancellor who called Donna "contemptuous." CP.1672. Kramer described Donna's legal actions as a "blatant attempt to circumvent the authority of the Court." T.257.

After the order was set aside, Kramer on August 15, 2005, submitted his first written Preliminary Report to the Chancellor stating he did not believe K or the medical evidence. RE107-19. He opined that Donna and her mother had manipulated and brainwashed K into accusing her father of sexual assault.

Kramer identified no facts supporting his decision to discredit the medical evidence or his claim of manipulation except for his observation in March that, in his opinion, the children were "ebullient" when interacting with David, but "somber and reflective" around their mother and maternal grandmother. T.343. Kramer's report contained several inaccuracies and omissions of significant factors supporting the abuse.

Based on Kramer's report, on August 17th the Chancellor entered a *sua sponte* order removing custody from Donna and directing her to return and

give the children to DHS. T. 34. The Chancellor further ordered that a psychologist evaluate the children [John Jolly, Ph.D was appointed later] to determine if Donna was manipulating K. She set the trial on the merits for September 20th. CP.468.

In depriving Donna of custody, the Chancellor did so without a hearing or actual prior notice to Donna that she was contemplating removing custody. Except in cases of extreme emergency, neither the Constitution nor Mississippi law allow a Chancellor to unilaterally remove custody from a mother without a prior adversary hearing except in extreme emergencies which are narrowly defined. Even then, an adversary hearing must be conducted within 48 hours on the issue of custody. Miss.Code.Ann §43-21-301(3), §43-21-307; *Perdue, supra.*

The Chancellor later gave two reasons for her extraordinary decision to remove the children from their mother without a hearing. Both were based on Kramer's report. The first reason was Kramer's belief that the medical and other evidence was wrong and that Donna was manipulating K. The second reason was that Kramer needed easy access to the children to complete his report. RE18-93.

Neither of these reasons even arguably justifies removal of custody from the custodial parent under Mississippi law. *Id.* Even if they did, removal is illegal without the required adversary hearing because in this case, there was no emergency justifying removal. At the very least Donna was entitled to a review of any emergency order at an adversary hearing held within 48 hours. *Perdue, supra.*

EVENTS OCCURRING AFTER SPENCER

WAS HIRED ON AUGUST 19, 2005:

On Friday August 19, after the Court's *sua sponte* custody order, Donna's mother, Sundra Girard, Ed.D., hired Spencer to file a motion requesting Girard be allowed to intervene to protect her statutory rights to visitation with her grandchildren. Girard also requested that Spencer file a motion asking for reconsideration of the custody order on Donna's behalf.

At that time, Girard gave numerous documents to Spencer for review such as Henderson's report of her medical examination, notes of the UMC examination, copies of some of K's treatment records at CCCAC as well documents from the court file. T.461-67; 893-909.

Under Mississippi law, once allegations of abuse arise during a pending Chancery Court proceeding, the Chancery Court has jurisdiction although the Youth Court ordinarily would have jurisdiction of original allegations of child abuse. Where the allegation arises in Chancery Court, the provisions of the Youth Court act apply to the abuse allegations, including the confidentiality proceedings attending Youth Court proceedings and other safeguards. Miss.CodeAnn. §43-21-151(c).

Spencer contacted Kramer on August 19th and told him that the children would not be delivered on the 19th because she was filing a motion to reconsider the order divesting Donna of custody. She informed Kramer she had information, which had not previously been made available to Kramer or the Chancellor, which she wished to present at a hearing to counter allegations of manipulation and bad faith. T.489.

Accordingly, Spencer scheduled an emergency

hearing for Monday, August 22nd. Because of time limitations, she faxed her motions (without exhibits) to the clerk and sent the required notices by facsimile to both Parrish and Kramer. Spencer also tried to reach David's attorney, Stewart Parrish, but could not because he had left for the day. The following day, Saturday, she called him at home to make sure he had notice of the hearing. Later Parrish confirmed that he had refused from the very first to cooperate with Spencer on any issue including such simple matter as setting hearings. CP.246-58, T.958.

Spencer arrived on Monday for the hearing ready to show why the court should reconsider its August 17th order. Spencer believed that she would receive the adversary hearing required by statute and would be allowed to contest the Chancellor's "emergency" removal as provided by law. Miss.Code.Ann §§43-21-301 and 43-21-307. Spencer was prepared through witnesses, medical records, CCCAC reports and reports from the TDFPS that Donna was not manipulating K and had legitimate concerns about visitation in the home of David's parents, and that her fears that K had been abused by David were based on substantial evidence, corroborated by qualified experts in the field of child abuse. Spencer, it will be remembered, had every reason to believe from his report that Kramer had not presented most of this evidence to the Chancellor in his report which led to the custody removal. RE107-119.

Notwithstanding the requirement of an immediate mandatory adversary hearing of §43-21-307, the Chancellor, refused to hear any evidence and directed a DHS representative to physically remove the children from Donna in the courtroom.

Donna was given no opportunity to even say goodbye to the children. T.647. She was not allowed to see the children for weeks. During the first thirty days the children were in DHS custody, Donna's sole contact with the children was one ten-minute telephone call.[2] T.25. In all, the children remained in foster care for 105 days with Donna being allowed to visit them only three times. *See, Donna's Brief,* p.9, n.6, T.931,933, Ex-25-ID 2/8/06 (Donna's letters to Kramer and DHS).

The right to an adversary hearing before custody can be changed even temporarily is so well-established that the Mississippi Supreme Court sanctioned Judge Perdue for refusing to grant a hearing under circumstances similar to the ones here. *Perdue, supra.* The *Perdue* case stands in stark contrast to what happened to Spencer who must now pay the attorneys for advocating what the Court previously characterized as a frivolous position.

On August 22, the judge did set the case for trial on the merits of David's motion to modify custody for September 20, 2005. C.P.468. On August 25th, the children were placed with foster parents after Donna objected to placement with the grandparents and the youth court prosecutor agreed suggesting neutral placement was in order. T.70,53,62. **Again**, the Chancellor refused to hear evidence on the issue of her decision to remove custody. T.26.

Hurricane Katrina struck on August 29th and inflicted wind damage in Clarke County. Donna was

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[2] Donna's repeated requests to see her children were ignored by Kramer and DHS despite Miss.CodeAnn. §§43-21-311(1) and (3) which state that both parent and child have a right to visit with one another at "least three (3) days per week" while the children are in custody.

unable to obtain information regarding the whereabouts of the children from DHS or Kramer or even confirmation they were safe. T.913-14.

In September, concerned about the length of time the children had been held incommunicado, Spencer consulted with Sacky Holdiness, Ph.D., a psychologist, who told Spencer that because the children had been taken from their mother abruptly and placed in foster care, the children, especially K, could suffer permanent emotional damage if not returned within 4 to 6 weeks. At this time, the case was still set for trial on September 20th. T.930-31.

On September 12, Spencer filed a status conference report and moved for a hearing and return of the children based on a material change in circumstances since the entry of the August 17th order. In that motion, Spencer advised the Court that Donna had now moved back to Mississippi, thus obviating one of the reasons why custody had been taken from her—that being Kramer's inability to communicate with the children while they were in Texas. Donna further agreed to pay David's cost of supervised visitation and the cost of having the children counseled. Spencer felt that these new facts, among others, might cause the Chancellor to return the children to Donna. In support of that motion, Spencer attached Henderson's, UMC's and Watkins Hospital's reports, and CCCAC records, in all about 100 pages. CP.497-503.

At this time, Kramer had not arranged for Dr. Jolly to visit with the children. When Donna asked the Court to allow her to visit with the children, the Court refused. The Chancellor set another status conference for September 15th. At that time, Kramer informed the court that Jolly had not completed his report and stated that he himself had not even

begun to prepare his GAL report. Evidence subsequently showed that Jolly had in fact sent Kramer his report on September 13th.

In sharp contrast to Kramer, Dr. Jolly found no evidence of manipulation by Donna and recommended immediately returning the children to Donna. CP.364-770; Ex.2; RE147.

When Spencer asked the court to consider appointing someone else as GAL so that the report could be expedited since Kramer could not say when he would complete his report, the Chancellor said, "Ms. Spencer you can file whatever you like but I am not going to remove Kramer." T.644, 646.

Since the case remained on the trial docket, on September 20th, both Donna and David appeared and were ready for trial. Kramer, however, had not completed his report. At this time, the Chancellor continued the trial on the merits this time **indefinitely** so that Kramer could prepare his report. The Chancellor did at least set a deadline of October 6th for Kramer to file his report as the judge put it stating **why custody should not be returned to Donna**. T.929. The judge also set a status conference for that day.

Spencer received a copy of Dr. Jolly's report on September 20th. Despite Jolly's finding of no manipulation by Donna, the court on September 20th appointed yet another expert, Dr. Jan Boggs, to evaluate the children. After Spencer received Dr. Jolly's report recommending return of the children, she filed a **Second Motion to Return Custody to the Mother** attaching Jolly's report. On the 20th, she had also received copies of the TDCPS' report, and she attached them to who a finding of abuse by David. She attached a copy of Donna's letter to the Chancery Court advising of her move to Texas since

one of the grounds David had alleged for contempt against Donna was a claim that she had failed to notify the court of her move. She also again summarized the proceedings and attached documents she had attached to her status report including more complete CCCAC records and a transcript of the proffer she had made at the 9/20/05 hearing--in all, about 300 pages. CP.756-63. After realizing she had made errors in ordering the exhibits, she filed an **Amended Second Motion** reordering the exhibits. She did **not** fax either the motions or the exhibits to the clerk.

Kramer failed to file his report by October 6th. This time, the Court did not even bother setting another date for the report but did set a status conference for November 7th. After the court failed to set a date, Spencer on October 19, 2006, filed a **motion to require Kramer to file his report** by a date certain and further requested that the court return custody to Donna. CP.1406-08. This motion does not, as the Court found, ask the Court to require Kramer to file a report returning custody. The body of the motion requests the "Court to (1) require [him] to file his final report and (2) order custody of [K and M] to be returned to Donna Chandler. CP.1408. That Kramer felt vexed because he misread the request is not an appropriate ground for sanctions.

At the November conference, Kramer had still not filed his report and furthermore failed to mention that Dr. Boggs had already recommended returning the children. The Court again denied Spencer's request for an immediate hearing (set out in the Second and Second Amended motions) but did sustain in part **Spencer's Motion to Require GAL to file his Report** and set a status conference and

ordered Kramer to file his report on that day. At Kramer's behest, Springer denied Donna's request to have the children during Thanksgiving although Boggs had told him it would be in the best interests of the children to return to Donna. T.352-53.

On December 5th, Kramer at last filed his report, and the Chancellor gave physical custody back to Donna pending the trial on the merits of permanent custody. Unfortunately, as far as Donna was concerned, the order also reinstated David's visitation under the terms of the divorce decree which meant unsupervised visitation with the children. The Chancellor rejected Donna's request for some sort of supervision.

On December 5th, Spencer filed a motion to lift the "gag order" [3]in order to give pertinent information from the file to law enforcement because Kramer had failed to do so with the result that the grand jury as well as the district attorney did not have all available information. She later noticed it for January 9th. T. 941-42. On January 3rd or 4th, Spencer realized she had inadvertently scheduled two cases in two courts for January 9th. She notified the court administrator but, because her father-in-law died in the interim, she inadvertently failed to notify Parrish or Kramer. T.1557-58.

The day of the hearing when Spencer failed to appear, the judge's clerk called her. Spencer explained her error and asked to participate by phone. The Court through the clerk denied the request and later cited Spencer for criminal contempt for failing to appear. T. 943.

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[3] She subsequently refilled this motion because of problems with notice and filed a specific request at the direction of the Chancellor.

On the 9th, the Court set the trial for February 6-10. When Spencer could not locate Donna for trial, Spencer moved to withdraw. T.1560.

On January 26, 2006, Parrish filed motions for attorney's fees and contempt alleging that Spencer had conspired to Donna flee Mississippi. Parrish's motion alleged violations of Rule 11 and the LAA. CP.1589-91. Kramer's filed a motion claiming Spencer had harassed him with a "constant barrage of paperwork, containing threats and half-truths." With the exception of a letter written by Spencer to Kramer threatening to hold him morally and legally responsible for harm to the children, Kramer did not designate the offending motions; nor did Parrish. CP.1576. Neither motion requested Spencer be cited for failing to appear on January 9th.

On February 3rd, and 6-9, the Court heard the motions to hold Spencer in contempt and impose sanctions and denied her motion to withdraw. The Court delayed ruling on the contempt and sanctions requests. The Court denied the **motions to lift the gag orders and to remove Kramer**.

On February 10th, the Chancellor began the "trial" on the merits, struck Donna's defenses, and without hearing any evidence on the abuse question held Donna in contempt and gave custody to David. RE1669-94.

On April 18th, after Spencer obtained a stay and unsuccessfully pursued an interlocutory appeal to the Mississippi Supreme Court to prevent turning over her client's file, Springer held Spencer in criminal contempt, ordered her to serve 90-day concurrent jail sentences and to pay fines and awarded $50,000 to Parrish and Kramer as attorney's fees. RE13-93. After rehearing, the Chancellor left the fines and judgments to Kramer

and Parrish in place, but amended the judgment to delete the jail time. RE94-106.

The Mississippi Supreme Court reversed Spencer's contempt convictions for violating the confidentiality of the proceedings and for issuing subpoenas without permission. It affirmed the attorneys' fee sanctions but reversed as to the amount and affirmed Spencer's criminal contempt conviction for failing to appear on January 9th.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE MISSISSIPPI SUPREME COURT HAS VIOLATED THE FIRST AMENDMENT AND DUE PROCESS IN APPLYING SANCTIONS AGAINST AN ATTORNEY FOR FILING PLEADINGS TO ENFORCE HER CLIENT'S FUNDAMENTAL CONSTITUTIONAL RIGHTS WHEN THE MOTIONS WERE NOT ONLY NON-FRIVOLOUS, BUT IN MOST INSTANCES WERE CLEARLY MERITORIOUS.

The First Amendment protects both Ms. Spencer's right to Free Speech and her right to petition on behalf of her client for redress of grievances. *E.g., In re Primus*, 436 U.S. 412 (1978), *NAACP v. Button*, 371 U.S. 415 (1963) ["[T]he First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion. . . ."]. Commentators have pondered the

First Amendment problems of Rule 11, F.R.Civ.P.[4] and similar sanctions when applied to restrict an attorney's First Amendment right and duty to zealously represent her client. *See*, Andrews, Carol Rice, *After BE&K: The "Difficult Constitutional Question" of Defining the First Amendment Right to Petition Courts,* 39 Houston L.Rev. 5 (2003); Solovy, Jerold S., Hirsch, Norman M., Simpson, Margaret J. and Tomoras, Christina T., *Sanctions under Rule 11: A Cross-Circuit Comparison,* 37 Loyola of Los Angeles L.Rev. 727 (2004).

In the Solovy article, the authors analyze the salutary purpose of such rules in deterring frivolous claims and attorney tactics that harass, delay or unnecessarily increase the expense of litigation and weigh them against the First Amendment right to petition the courts and the potential for such rules to have a chilling effect on an attorney's duty of zealous advocacy. Their view is that "the potential chilling effect of such sanctions warrants recommending an amendment to the Rule that makes clear that nonfrivolous papers, including complaints, may not be sanctioned for any purpose." *Id.* at 763.

Ms. Rice, by contrast, argues that the First Amendment right to petition protects only winning pleadings in which case rules imposing sanctions would be appropriately subject to strict

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[4] Mississippi's Rule 11 is not coextensive with Federal Rule 11. It lacks, for example, the "safe harbor provision" which allows an attorney to withdraw a potentially sanctionable pleading when counsel opposite feels it may violate Rule 11. That provision was added to the Federal Rule largely to avoid the problem of chilling zealous advocacy and the Right to Petition because of possible vagueness and overbreadth problems with Federal Rule 11. *See,* discussions in Rice and Solovy and commentary to 1993 Amendments to Rule 11.

constitutional scrutiny under an analysis similar to that applied in *New York Times v. Sullivan,* 373 U.S.254 (1964) and its progeny. Losing, but non-frivolous pleadings would nevertheless be given "breathing room" under a First Amendment analysis and would be protected. Rice, *supra* at 1342-70.

Here Spencer was sanctioned for filing legally non-frivolous pleadings designed to protect the rights of her client and her children.[5] This Court has described the particular issues Spencer sought to protect as fundamental constitutional rights: the right not to have your children taken away without due process of law, the right to petition; and the right of association. *E.g., Boddie v. Connecticut,* 401 U.S. 371, 382-83 (1971) [Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as "of basic importance in our society," rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect]; *Meyer v. Nebraska,* 262 U.S. 390 (1923) [Due Process requires a hearing before children can be taken away]; *B.E. & K. Const. Co. v. N.L.R.B.*, 536 U.S. 516 (2002). "[T]he right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances"]; *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996) [Due process

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[5] Because her client fled the jurisdiction and her claims were ultimately dismissed by both the Chancellor and the Supreme Court under the fugitive disentitlement doctrine, Spencer ultimately did not prevail on many of her claims—although it is clear as she has shown in the foregoing statement that most, if not all of them, were not only non-frivolous, but actually meritorious—particularly her claim that Donna was entitled to a hearing before her children could be taken from her custody for 105 days.

requires courts give "close consideration" to provisions that block access to the courts when fundamental rights such as parental rights are at stake].

The basis for the sanctions here is that the pleadings at issue were either too long or "scandalous" because they attached K's medical and other records in support of the requests for relief,[6] or they caused the other side or the GAL to "feel" vexed or harassed because of the need to respond. The motions to remove Kramer and to lift the gag order were deemed to be so devoid of legal merit as to be legally frivolous. However, reasonable people could believed Kramer had failed to comply with youth court laws, and the Chancellor was simply incorrect when she said under no circumstances did she have authority to violate "youth court" confidentiality. Miss.CodeAnn. §43-21-261 permits the judge to allow disclosure "to any person pursuant to a finding . . . of compelling circumstances affecting the health or safety of a child and that such disclosure is in the best interests of the child." 43-21-261(1)(g). It is not without significance that the judge refused to allow Spencer to produce evidence to support her motion. T.941-42.

The Chancellor and what she frequently described as "her GAL" were obviously personally offended by Spencer's requests that the GAL file his report and Donna's requests for visitation, and the

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[6] Or that the attachments were both faxed and filed, thereby unnecessarily cluttering up the record, an allegation which is not supported by the record. At issue here are three pleadings of approximately 7 or 9 pages each which were faxed. The attachments (approximately 100 pages, 300 pages and 300 pages, respectively) were not faxed. Thus, Spencer's so-called unnecessary faxing added around 30 pages or less to the record.

motion to have him removed for failure to comply with the court's time limits for filing and his refusal to provide reasons for his claim that Donna had manipulated K, and his inaccuracies in his reports, among other reasons. Kramer also felt "harassed" and "threatened" because Spencer, exasperated with Kramer's denial of reasonable visitation and his recommendations that the court deny Donna the hearing and visitation to which she was plainly entitled, wrote a letter setting out her problems with his handling of the case and threatening to hold him legally and morally responsible for any harm to the children resulting from his violations of Donna and the children's rights.

What is at issue in this case is how far Courts may go in imposing sanctions because they disagree with the content of an attorney's arguments. The Chancellor specifically found that Spencer filed her motions in good faith out of a sincere desire to obtain relief rather than from a desire to harass or vex. *Spencer, supra.* Significantly, the Chancellor made no finding that the pleadings were legally frivolous [other than the gag order and motion to remove Kramer and these were not]. In fact, the gist of both the Chancellor's findings and the Mississippi Supreme Court's holdings is that although Spencer's pleadings may have been well-taken or at least non-frivolous, Spencer "crossed the line" by persisting after the judge told her she was not going to give her the constitutionally mandated hearing until the GAL had filed his report.

In applying sanctions to Spencer's non-frivolous pleadings, the Mississippi courts have failed to strictly construe the sanctions provisions of either Rule 11 or the LAA narrowly to protect core constitutional rights of speech or due process; nor

have they construed them to give sufficient "breathing room" to these rights. *New York Times, supra.*

As a result, the Mississippi Supreme Court with virtually no analysis has adopted a rule which would sanction any attorney who "crosses the line" no matter how non-frivolous the pleadings are merely because the other side and the lower court judge do not like the content of the motions. Such an interpretation, at least, as it applies to Spencer is both vague and overbroad. Moreover, it has a chilling effect on future advocacy not only by Spencer, but other attorneys as well.

Such a construction is not even arguably constitutional, and this Court should grant certiorari to protect attorneys in Mississippi and a diligent and conscientious attorney who should not have the blemish of sanctions on her record.

II. WHETHER SPENCER'S CONSTITUTIONAL RIGHTS WERE DENIED WHEN SHE WAS TRIED IN SECRET FOR CRIMINAL CONTEMPT AND WITHOUT NOTICE OF THE LEGAL ELEMENTS OF THE OFFENSE OR THAT SHE WAS EVEN BEING CHARGED CRIMINALLY AND/OR WAS CONVICTED OF CRIMINAL CONTEMPT BASED ONLY ON A FINDING OF SIMPLE NEGLIGENCE.

Spencer was convicted of criminal contempt for negligently failing to appear at a scheduled hearing on January 9th. The first constitutional

problem surrounding Spencer's conviction is that she had no notice that she was being tried for a contempt involving her failure to appear. The only notice of the proceedings Spencer had came from the motions filed by Kramer and Parrish asking that she be cited for contempt, and neither motion requests that Spencer be cited for contempt, criminal or otherwise, for her failure to appear. In short, she had no notice of the legal elements of the offense.

Adequate notice of the legal elements of an offense is a fundamental, constitutional right in both civil and criminal cases, and it is axiomatic that criminal contempt proceedings are unconstitutional where notice is inadequate. *In Re Oliver*, 333 U.S. 257, 68 S.Ct. 499 (1948) [criminal contempt which does not involve open threat to the orderly procedure of the court which must be immediately suppressed requires notice and must be attended by all of the constitutional safeguards accorded a criminal defendant].

Furthermore, this Court has also found that defendants in criminal contempt proceedings must be presumed innocent, proved guilty beyond a reasonable doubt, and accorded the right to refuse to testify against themselves, *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 444 (1911), must be advised of charges, have a reasonable opportunity to respond to them, and be permitted the assistance of counsel and the right to call witnesses, *Cooke v. United States*, 267 U.S. 517, 537 (1925); must be given a public trial before an unbiased judge, *In re Oliver*, 333 U.S. 257 (1948); and must be afforded a jury trial for serious contempts, *Bloom v. Illinois*, 391 U.S. 194, 204 (1968).

Moreover, the burden of proof required to convict a defendant of a criminal contempt requires

"proof beyond a reasonable doubt." Miss.Code Ann. §11-51-11(4); *Gompers, supra.*

There is no proof that Spencer's failure to appear in court was willful; nor did the Chancellor so find. She had a scheduling conflict in another court. Even if Spencer was negligent in finding herself with two court appearances on one day, proof of negligence, even gross negligence, is insufficient to find a person in criminal contempt. A conviction for criminal contempt is proper only where the contemnor has willfully, deliberately, and contumaciously ignored the court. *Cooper v. Keyes,* 510 So.2d 518, 519 (Miss.1987), *Brame v. State,* 755 So.2d 1090, 1094 (Miss. 2000) [criminal contempt cannot be predicated on negligence, even gross negligence].

Next, even if the sanction motions had asked that Spencer be cited for criminal contempt for failure to appear, it is axiomatic that the attorneys for the other side can neither initiate nor constitutionally prosecute charges for criminal contempt. See *Young v. United States ex. rel. Vuitton,* 481 U.S. 787 (1987) (Although the court had authority to appoint special prosecutors to prosecute defendants for contempt but court could not appoint the opponents attorneys as special prosecutors) [Blackmun, J. concurring and noting that the constitution prevents appointment of opponents as special prosecutors]; *Brotherhood of Locomotive Firemen & Enginemen v. United States,* 411 F.2d 312, 319 (5th Cir. 1969) (appointment of interested prosecutor characterized as due process violation).

Finally, the proceedings are constitutionally deficient Spencer was tried in secret because of Judge Springer's "gag order" in violation of the well-established constitutional requirements guaranteed

by the Sixth and Fourteenth Amendments of the United States Constitution in criminal contempt cases that the defendant be afforded a public trial. The Mississippi Constitution affords similar constitutional protections. *In Re Oliver*, 333 U.S. at 271 [failure to accord public trial on contempt charge violated due process of law].

The Mississippi Supreme Court, however, distinguished *In Re Oliver* because this case involved a Youth Court proceeding. That Court found that the state's interest in protecting abuse proceedings outweighed Spencer's interest in a public trial. The problem, of course, is that the contempt proceeding involving Spencer's failure to appear had nothing to do with the abuse allegation, it had to do with failure to appear. The abuse allegation was not even remotely relevant to Spencer's failure to appear. The state's interest in protecting youth court proceedings fails to outweigh Spencer's right to a fair trial.

For any one or combination of deprivations of Spencer's rights, this Court should grant certiorari and reverse the contempt conviction.

CONCLUSION

This Court should grant certiorari because Mississippi Courts have failed to protect fundamental important constitutional rights. The result of the holding in this case has a chilling effect on the free exercise of those rights in a way which does not accord with prior decisions of this Court.

Respectfully submitted,
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APPENDIX A

Supreme Court of Mississippi

In re Karen H. SPENCER No. 2006-CA-00735-SCT
Original Opinion Withdrawn and Superseded with the following Opinion on Denial of Rehearing June 19, 2008

Background: Attorney appealed order of the Chancery Court, Clarke County, Sarah P. Springer, J., holding her in criminal contempt and imposing monetary sanctions.

Holdings: On denial of rehearing, the Supreme Court, Waller, P.J., held that:

(1) chancellor could not award, as sanction, fees and expenses greater than that supported by record;
(2) sanctions against attorney were warranted pursuant to Litigation Accountability Act;
(3) several pleadings filed by attorney constituted harassment, thus permitting award of sanctions under Rule 11; but
(4) chancellor should have recused herself from hearing contempt matter involving subpoenas.

Affirmed in part, reversed and rendered in part, reversed and remanded in part, and vacated and remanded in part.

Easley, J., concurred in part and dissented in part.

West Headnotes

[1] Appeal and Error 30 984(1)

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k984 Costs and Allowances
30k984(1) k. In General. Most Cited Cases
Supreme Court reviews a trial court judgment that imposes sanctions under Rule 11 or the Litigation Accountability Act for abuse of discretion. West's A.M.C. § 11-55-7; Rules Civ.Proc., Rule 11(b).

[2] Appeal and Error 30 840(1)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k840 Review of Specific Questions and Particular Decisions
30k840(1) k. In General. Most Cited Cases
In the absence of a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of relevant factors, a judgment of the lower court's imposition of sanctions under Rule 11 or the Litigation Accountability Act will be affirmed. West's A.M.C. § 11-55-7; Rules Civ.Proc., Rule 11(b).

[3] Contempt 93 39

93 Contempt
93II Power to Punish, and Proceedings Therefor

93k39 k. Discretion of Court. Most Cited Cases
The decision to hold a person or entity in criminal or civil contempt is a discretionary function of the trial court.

[4] Contempt 93 66(7)

93 Contempt
93II Power to Punish, and Proceedings Therefor
93k66 Appeal or Error
93k66(7) k. Review. Most Cited Cases
Supreme Court reviews a trial court's judgment of criminal contempt ab initio.

[5] Costs 102 2

102 Costs
102I Nature, Grounds, and Extent of Right in General
102k1 Nature and Grounds of Right
102k2 k. In General. Most Cited Cases
Chancellor could not impose sanctions, under Litigation Accountability Act and Rule 11, that exceeded amount of fees and expenses supported by the record; only recovery of "reasonable" fees and costs was allowed by Act and Rule, and punitive functions of both Act and Rule were served by simply awarding reasonable attorney fees and costs, not amount in excess of them. West's A.M.C. § 11-55-5(1); Rules Civ.Proc., Rule 11.

[6] Costs 102 2

102 Costs
102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right
102k2 k. In General. Most Cited Cases
In imposing Rule 11 sanction of attorney fees and expenses against attorney for pleadings filed in child custody dispute, trial court improperly awarded the fees and expenses to the opposing party's attorney, rather than the opposing party; Rule 11 explicitly instructed that the sanctioned party be ordered to pay to the "opposing party or parties" the reasonable expenses incurred. Rules Civ.Proc., Rule 11(b).

[7] Attorney and Client 45 24

45 Attorney and Client
45I The Office of Attorney
45I(B) Privileges, Disabilities, and Liabilities
45k24 k. Liability for Costs; Sanctions. Most Cited Cases
Attorney's numerous filings on behalf of mother in child custody dispute regarding allegations of abuse by father, and attorney's claims and defenses with resect to gag order in that case were without substantial justification, and thus warranted award of sanctions under the Litigation Accountability Act. West's A.M.C. § 11-55-5.

[8] Costs 102 2

102 Costs
102I Nature, Grounds, and Extent of Right in General
102k1 Nature and Grounds of Right
102k2 k. In General. Most Cited Cases

Costs 102 194.44

102 Costs
102VIII Attorney Fees
102k194.44 k. Bad Faith or Meritless Litigation. Most Cited Cases
The term "frivolous" as used in the Litigation Accountability Act takes the same definition as it does under Rule 11: a claim or defense made without hope of success. West's A.M.C. §§ 11-55-3(a), 11-55-5; Rules Civ.Proc., Rule 11.

[9] Costs 102 2

102 Costs
102I Nature, Grounds, and Extent of Right in General
102k1 Nature and Grounds of Right
102k2 k. In General. Most Cited Cases
Sanctions are appropriate under Rule 11, which permits a court to award a responding party reasonable attorneys' fees and expenses when a party files a motion or pleading which is frivolous or is filed for purpose of harassment or delay, only when a motion or pleading has been filed. Rules Civ.Proc., Rule 11(b).

[10] Costs 102 2

102 Costs
102I Nature, Grounds, and Extent of Right in General
102k1 Nature and Grounds of Right
102k2 k. In General. Most Cited Cases
A motion or pleading is filed for purpose of harassment or delay, so as to warrant Rule 11 sanctions, when the party does not have a viable claim. Rules Civ.Proc., Rule 11(b).

[11] Attorney and Client 45 24

45 Attorney and Client
45I The Office of Attorney
45I(B) Privileges, Disabilities, and Liabilities
45k24 k. Liability for Costs; Sanctions.
Most Cited Cases
Several pleadings filed by attorney in child custody dispute constituted harassment, so as to find attorney liable for attorney fees and costs under Rule 11; second motion to return custody to mother and amended second motion to return custody to mother were harassment in light of court's holding that such arguments were premature when guardian ad litem had not yet filed report, motion to require guardian ad litem to file report returning custody to mother was harassment of guardian ad litem and unnecessary, motions to lift gag order were frivolous because there was no hope of success, and motion to disqualify and remove guardian ad litem, filed first day of trial, was frivolous. Rules Civ.Proc., Rule 11(b).

[12] Contempt 93 55

93 Contempt
93II Power to Punish, and Proceedings Therefor
93k55 k. Notice or Other Process; Attachment.
Most Cited Cases

Contempt 93 61(1)

93 Contempt
93II Power to Punish, and Proceedings Therefor
93k61 Hearing and Determination

93k61(1) k. In General; Counsel. Most Cited Cases
Before one can be held in contempt, alleged contemnor must be provided a specification of charges against him, notice, and a hearing.

[13] Contempt 93 55

93 Contempt
93II Power to Punish, and Proceedings Therefor
93k55 k. Notice or Other Process; Attachment. Most Cited Cases
Attorney waived her right to notice and specification of contempt charge against her; attorney did not raise objection to her lack of notice or specification of charges at pre-trial hearing on contempt and sanctions, she argued merits of contempt at pre-trial hearing, and chancellor permitted her to call witnesses in her own defense, and she did not object to testimony about her failure to appear on this date or move for continuance in order to prepare to respond to this charge. Uniform Chancery Court Rule 1.05.

[14] Constitutional Law 92 4494

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)25 Other Particular Issues and Applications
92k4492 Contempt
92k4494 k. Proceedings. Most Cited Cases

Contempt 93 61(1)

93 Contempt
93II Power to Punish, and Proceedings Therefor
93k61 Hearing and Determination
93k61(1) k. In General; Counsel. Most Cited Cases
Holding contempt hearings against attorney in youth court abuse proceedings in private did not violate due process; attorney had separate counsel to represent her interests at hearing on contempt and sanctions, she did not object to private nature of hearing when it occurred, court permitted her to call witnesses in her defense and to testify on her own behalf, and chancellor rescinded portions of contempt order sentencing her to imprisonment. U.S.C.A. Const.Amend. 14.

[15] Judges 227 47(1)

227 Judges
227IV Disqualification to Act
227k47 Acting as Counsel or Other Participation in Cause
227k47(1) k. In General. Most Cited Cases
Chancellor did not become substantially involved with prosecution of contempt charge against attorney for failure to attend hearing in underlying child custody dispute, so as to warrant recusal from hearing the contempt charge; attorney filed notice for hearing which she completely failed to attend, next time attorney appeared before chancellor, chancellor took up contempt charge, among others, and at conclusion of chancellor's consideration of matter, she sentenced attorney to pay $100 fine or be incarcerated for 24 hours, which was sentence substantially below maximum allowed by statute.

[16] Contempt 93 60(3)

93 Contempt
93II Power to Punish, and Proceedings Therefor
93k60 Evidence
93k60(3) k. Weight and Sufficiency. Most Cited Cases
Evidence was insufficient to hold attorney in contempt for providing grandmother, who retained attorney in child custody matter, copies of chancery court filings and orders in alleged violation of gag order; it was uncertain whether grandmother qualified as "third party" or "agent" under chancellor's first order or "person not directly associated with parties or their attorneys" under chancellor's written order, and thus, orders were not sufficiently explicit or clear to give fair notice to men of common intelligence of conduct which would offend these orders.

[17] Contempt 93 60(3)

93 Contempt
93II Power to Punish, and Proceedings Therefor
93k60 Evidence
93k60(3) k. Weight and Sufficiency. Most Cited Cases
Evidence was insufficient to show that attorney's conduct during underlying child custody dispute was willful or contumacious violation of Youth Court Act so to hold attorney in contempt; guardian ad litem filed motion to hold attorney in contempt for disseminating his second interim report prior to date of e-mail sent by attorney, because motion pre-dated e-mail in record, message could not serve as basis for

holding attorney in contempt, while attorney's e-mail did include guardian's report, arguably youth court record, it was directed to mother, attorney's unrebutted testimony was that, by sending courtesy copy of mail message to grandmother, she hoped to place documents in mother's possession, at that time, it had been more than one month since attorney had had contact with mother, record indicated grandmother paid attorney for her representation of mother, and grandmother herself was attorney's client and had right to be informed of outcome of custody hearing. West's A.M.C. §§ 43-21-151(1)(c), 43-21-153.

[18] Judges 227 47(1)

227 Judges
227IV Disqualification to Act
227k47 Acting as Counsel or Other Participation in Cause
227k47(1) k. In General. Most Cited Cases
Chancellor should have recused herself from hearing contempt matter against attorney who allegedly violated order regarding subpoenas in underlying child custody dispute; prior to hearing on contempt, neither father nor guardian ad litem requested chancellor hold attorney in contempt for violating order regarding subpoenas, while attorney waived notice of contempt charge by appearing and defending herself through separate counsel, chancellor instigated and prosecuted contempt charge, and it was improper for chancellor to sit in judgment where she had substantial personal involvement in prosecution of charge.

[19] Contempt 93 4

93 Contempt
93I Acts or Conduct Constituting Contempt of Court
93k1 Nature and Elements of Contempt
93k4 k. Civil Contempt. Most Cited Cases
If primary purpose of contempt order is to enforce rights of private party litigants or enforce compliance with a court order, then contempt is civil.

[20] Contempt 93 70

93 Contempt
93III Punishment
93k70 k. Nature and Grounds in General. Most Cited Cases

Contempt 93 81

93 Contempt
93III Punishment
93k81 k. Purging Contempt After Adjudication. Most Cited Cases
Contemnor may be jailed or fined for civil contempt; however, contemnor must be relieved of penalty when he performs required act.

[21] Contempt 93 70

93 Contempt
93III Punishment
93k70 k. Nature and Grounds in General. Most Cited Cases
Criminal contempt penalties are designed to punish the defendant for disobedience of a court order; punishment is for past offenses and does not

terminate upon compliance with court order.

*333 Julie Ann Epps, Canton, attorney for appellant.
J. Stewart Parrish, Meridian, attorney for appellee.

EN BANC.

ON MOTION FOR REHEARING

WALLER, Presiding Justice, for the Court.

¶ 1. The motion for rehearing is denied. The original opinion is withdrawn and this opinion substituted therefor.

¶ 2. A grandmother and a mother retained attorney Karen Spencer to represent them in a child-custody matter before the Chancery Court of Clarke County, Mississippi.[1] During the course of this representation, the chancellor, on motion by the guardian ad litem and counsel for the father, found Spencer to be in contempt of court. The chancellor ordered Spencer to pay fines and to be incarcerated as sentence for the contempt. The chancellor, also on motion by the father and the guardian ad litem, imposed monetary sanctions against Spencer under the Litigation Accountability Act of 1988 and Rule 11 of the Mississippi Rules of Civil Procedure. On reconsideration, the chancellor rescinded the portions of her contempt order which sentenced Spencer to incarceration. Spencer now appeals. M.R.A.P. 4.

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[1] The parallel matter is D.C. v. D.C., 2006-CA-00320-SCT, ---So.2d ---- (Miss. 2008). Due to the sensitive information discussed below and in the parallel matter, the proper names of the parties have been removed. M.R.A.P. 48A.

FACTS

¶ 3. The grandmother retained Spencer to represent her in her attempt to intervene and assert a claim for grandparents' visitation in Cause No. 00-0038(S), a child-*334 custody-modification matter filed in the Chancery Court of Clarke County, Mississippi. The custody modification originated with the father's petition for modification of the visitation agreement entered upon his divorce from the mother. He sought full summer visitation with his children: a daughter born in 1995, and a son born in 1997. The grandmother's motion to intervene, faxed to the chancery clerk on Friday, August 19, 2005, included a request for clarification of the Order Sua Sponte (or "sua sponte order" herein) entered two days earlier by the chancery court. The sua sponte order temporarily placed physical custody of the children with the Mississippi Department of Human Services ("DHS"); required the mother to bring the children to the office of the guardian ad litem by 3:00 p.m. the upcoming Friday to be placed with the DHS; and ordered supervised visitation for both the mother and the father. The order authorized the guardian to instigate abuse proceedings in youth court.

¶ 4. At the time, Joe Kieronski was counsel of record for the mother. He signed the sua sponte order under the heading "approved as to form." The mother did not present the children to the guardian ad litem that Friday as ordered, based upon the advice of Spencer that the motion to clarify suspended the enforcement of the sua sponte order.

¶ 5. Spencer faxed a "Motion for

Emergency/Expedited Hearing on Motion to Intervene and/or for Modification and/or for Reconsideration or Clarification of Order Sua Sponte" to the chancery clerk and counsel of record on behalf of both the grandmother and the mother. She also faxed a notice of hearing to the clerk and counsel, noticing the hearing on the motions for 9:00 a.m. the following Monday.[2] The exhibits to the motion included the medical records and counseling records of the minor daughter. Spencer also filed an affidavit made by the mother which alleged the father sexually abused their daughter. The records and affidavit were not submitted under seal or otherwise marked "confidential."

¶ 6. On Monday, the chancellor entered an order allowing Kieronski to withdraw as counsel for the mother and substituted Spencer as counsel. The chancellor denied the grandmother's motion to intervene and for clarification. The children were turned over to DHS, which placed them with their paternal grandparents. A shelter hearing was set for Wednesday in the parallel youth-court matter. Trial of the custody issues was rescheduled for September 20.

¶ 7. Prior to the trial date, Spencer caused subpoenas for computer records to issue to a hospice and a church. The father was, at the time, working as a chaplain for the hospice and previously had worked for the church. The subpoenas requested

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[2] Spencer engaged in a pattern of first faxing a copy of pleadings to the chancery clerk's office and to counsel of record, and subsequently mailing an original to the clerk and copies to counsel. This practice resulted in a large record, containing duplicate copies of several lengthy pleadings.

that the hospice and the church produce documents concerning communications between them or the father and Edward N. Kramer, III, Evelyn N. Kramer and/or Nick Smith.[3] The hospice filed a motion to quash its subpoena, and the father sought to have the subpoena for the church quashed.

¶ 8. In the time between the issuance of the subpoenas and the scheduled trial date, Spencer faxed to and filed a Status Report and Motion for Change with Custody*335 to the clerk and counsel. She attached to this motion the daughter's medical records. The next day, she filed a response to the father's Motion to Quash, again attaching to the motions the daughter's medical records.

¶ 9. On the scheduled trial date, Tuesday, September 20, the guardian ad litem announced he was not prepared to proceed. He had not obtained reports from medical experts concerning the veracity of the abuse and manipulation allegations pertaining to the minor daughter, nor had he had time to include the reports in his opinion. On the same date, the chancellor heard and denied the mother's Motion for Change of Custody, scheduled a status conference for October 6, and instructed the chancery clerk to seal the court's file in the custody matter. The chancellor imposed a gag order on the parties and their attorneys and agents, with the exception of the guardian ad litem. The guardian could discuss matters with the experts upon which he would rely to make his report. The chancery court quashed the subpoena to the church. Finally, the chancellor

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[3] The guardian ad litem, his ex-wife, and an unrelated person, respectively.

ordered Spencer to submit future subpoenas to the court for approval before the subpoenas were issued.

¶ 10. One week after the scheduled trial date, Spencer filed a "(Second) Motion to Return Custody to Mother." Attached to this motion were many of the same medical records previously filed with other motions. (This motion alone comprised more than two volumes of this Court's record on appeal.) Three days after that, she faxed and filed a "Motion for Emergency/Expedited Hearing on Motion to Return Custody to Mother" and a notice of hearing, setting the matter to be heard on October 10, the rescheduled conference date. Counsel for the father filed an objection to the hearing, citing prior engagements in Kemper County and the fact that Spencer unilaterally had set the matter for hearing without contacting him.

¶ 11. On October 10, Spencer filed an "Amended (Second) Motion to Return Custody to Mother," including all the attached medical records that accompanied the first version. Spencer later would state that the exhibits to the first version were incorrectly identified, which made it necessary to re-file the motion. One week later, Spencer filed a "Motion to Require Guardian ad litem to File Report Returning Custody to [the mother]." The next day, Spencer faxed and filed a "Motion for Order Scheduling the Trial of All Pending Issues." She faxed and filed a notice of hearing on all pending motions to be heard for November 7, the next time the chancellor scheduled a status conference.

¶ 12. At the hearing on November 7, the guardian ad litem indicated to the chancellor that he was

awaiting the completion of a few more counseling sessions with a psychologist and that he intended to interview four or five more people before completing his report. The chancellor found Spencer's motions reached the ultimate issue of custody and denied them as premature. The guardian ad litem was instructed to file his report no later than December 5. No hearing was set for this date.

¶ 13. On December 5, counsel for the father was not present in Clarke County when the court went back on record in this matter. The guardian ad litem filed his first interim report as ordered, which recommended the children remain in the legal custody of DHS. However, the mother was given temporary physical custody of the children. At some point within the following three days, the mother left Mississippi with the children and did not return.

¶ 14. Consistent with the chancellor's previous order regarding subpoenas, on December 5, Spencer sought permission *336 from the chancellor to issue "trial" or "witness" subpoenas for trial the following February. The chancellor granted permission, and Spencer had the chancery clerk issue ten subpoenas that day.

¶ 15. One week later, Spencer filed a notice of hearing to bring her pending motions to be heard on January 9, 2006. Spencer failed to attend this hearing. According to Spencer, she had realized she had a scheduling conflict that day, but had failed to file a re-notice of hearing. She stated she had attempted to participate by telephone, but counsel were not willing to discuss the motions by telephone, and the court did not permit her participation in this

manner. Spencer was ordered to pay the cost of transcription of the hearing. At the contempt hearing, Spencer apologized and accepted responsibility for the mistake. The record indicates that, by this time, the father was aware that the mother had left Mississippi with the children.

¶ 16. On January 17, Spencer filed her first motion to withdraw as counsel. She stated she had been unable to speak with the mother since December 12 the preceding year. The father subsequently moved the chancellor to find the mother and Spencer in contempt for a civil conspiracy to deprive him of visitation and custody. The guardian ad litem filed a motion for contempt, seeking attorneys' fees. As grounds for sanctions, the guardian ad litem alleged the actions of the mother and Spencer in filing numerous motions were responsible for the majority of his fees; and that the grandmother had filed a Bar complaint against him using his reports, which could only be obtained through Spencer. He also cited the mother's actions in leaving Mississippi with the children.

¶ 17. The contempt hearing began Friday, February 3, and ended the following Thursday. The chancellor took the motions for contempt under advisement. The trial on the merits of the custody petition began and concluded the next day. The father, through counsel, filed a separate motion to find Spencer in contempt after trial for disseminating information about the case that had appeared on various internet websites. Spencer filed her second motion to withdraw on March 7, 2006.

¶ 18. The chancellor entered her seventy-six-page

Memorandum Opinion and Judgment on April 18, 2006. The contempt order imposed the following sanctions and sentences. For failing to appear at the January 9 hearing, Spencer was held in contempt and ordered to pay $100 or to be incarcerated for twenty-four hours. For violations of the gag order and youth court confidentiality statute, Spencer was held in contempt and sentenced to pay a $500 fine and be incarcerated for ninety days. This sentence was imposed twice, for violations occurring before and after the trial of the custody matters. For causing a subpoena to issue to the Quitman School District in violation of the subpoena order, Spencer was held in contempt and ordered to pay $100. For causing four subpoenas to be issued and directed to four employees of DHS in violation of the subpoena order, Spencer was sentenced to pay $500 and to be incarcerated for ninety days for each subpoena, with incarceration sentences to run concurrently. For filing frivolous pleadings and otherwise harassing the guardian ad litem and counsel for the father, Spencer was ordered to pay $25,000 in attorneys' fees and expenses to each attorney, with interest to accrue at five percent. On reconsideration, the chancellor rescinded the portions of this judgment which sentenced Spencer to incarceration.

STANDARDS OF REVIEW

[1][2] ¶ 19. The decision to award monetary sanctions under the Litigation *337 Accountability Act is left to the discretion of the trial court. Miss.Code Ann. § 11-55-7 (Rev.2002). The same is true for sanctions awarded under Rule 11 of the Mississippi Rules of Civil Procedure. Miss. R. Civ. P. 11(b). This Court reviews the judgment of the

sanctioning trial court for abuse of discretion. Wyssbrod v. Wittjen, 798 So.2d 352, 357 (Miss.2001). "In the absence of a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of relevant factors, the judgment of the court's imposition of sanctions will be affirmed." Id. (citations and quotations omitted).

[3][4] ¶ 20. The decision to hold a person or entity in criminal or civil contempt also is a discretionary function of the trial court. Wyssbrod, 798 So.2d at 359. This Court reviews the trial court's judgment of criminal contempt ab initio. In re Smith, 926 So.2d 878, 885-86 (Miss.2006). See also Dennis v. Dennis, 824 So.2d 604, 608 (Miss.2002).

DISCUSSION

I. WHETHER THE CHANCELLOR ERRED IN GRANTING A JUDGMENT AGAINST SPENCER IN FAVOR OF COUNSEL FOR THE FATHER AND THE GUARDIAN AD LITEM PURSUANT TO THE LITIGATION ACCOUNTABILITY ACT AND/OR RULE 11.

[5] ¶ 21. Spencer's first assignment of error is that the chancellor erred when imposing sanctions against her under the Litigation Accountability Act and Rule 11 of the Mississippi Rules of Civil Procedure. The father and the guardian ad litem generally respond that the sanctions are appropriate because Spencer filed several frivolous pleadings and communicated with them in a harassing manner.

¶ 22. The Litigation Accountability Act authorizes a

court to impose monetary sanctions "in any civil action commenced or appealed in any court of record in this state." Miss.Code Ann. § 11-55-5(1) (Rev.2002). According to the Act:

[T]he court shall award, ... in addition to any other costs otherwise assessed, reasonable attorney's fees and costs against any party or attorney if the court ... finds that an attorney or party ... asserted any claim or defense, that is without substantial justification, or ... was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceedings by other improper conduct including, but not limited to, abuse of discovery procedures available under the Mississippi Rules of Civil Procedure.

Id. A trial court must examine certain factors before awarding sanctions under the act. Miss.Code Ann. 11-55-7 (Rev.2002); Miss. Dep't of Human Servs. v. Shelby, 802 So.2d 89 (Miss.2001).

¶ 23. Rule 11 of the Mississippi Rules of Civil Procedure permits a court to impose sanctions against a party or his attorney. Miss. R. Civ. P. 11. "If any party files a motion or pleading which, in the opinion of the court, is frivolous or is filed for the purpose of harassment or delay, the court may order such a party, or his attorney, or both, to pay the opposing party or parties the reasonable expenses incurred by such other parties and by their attorneys, including reasonable attorney's fees." Id.

¶ 24. The chancellor entered a judgment which ordered Spencer to pay $25,000 to the guardian ad litem as "penalty pursuant to the Litigation

Accountability Act and sanction pursuant to Rule 11, MRCP." The chancellor entered an identical judgment to be paid to counsel for the father. The testimony at the hearing on the motions for sanctions indicated that *338 the guardian ad litem incurred $11,249 in fees and expenses up to February 3, 2006. His invoices were entered as exhibits, reflecting an outstanding balance of $12,449.18 in fees and expenses as of February 8, 2006. The testimony also reflected that counsel for the father incurred $11,861.36 in fees and expenses up to January 31, 2006. Counsel testified he charged $150 per hour and anticipated billing his client for fifty-seven additional hours from that date until the end of trial.FN4

FN4. This product comes to $8,550, yielding a total sum of $20,411.36 in fees and expenses.

[6] ¶ 25. After reviewing the record, we find the chancellor committed plain error and therefore abused her discretion by awarding a judgment of fees and expenses greater than that supported by the record. There is nothing in the Litigation Accountability Act or Rule 11 which supports awarding attorneys' fees and expenses in excess of those actually incurred. Both the Act and the Rule allow only for the recovery of "reasonable" fees and costs. We previously have identified the factors to be considered when determining the reasonableness of attorneys' fees. See McKee v. McKee, 418 So.2d 764 (Miss.1982); Miss. Rule of Prof'l Conduct 1.5(a). The punitive functions of both the Act and the Rule are served by simply awarding reasonable attorneys' fees and costs, not an amount in excess of them. Additionally, the chancellor erred in awarding fees

and expenses to the father's attorney, since Rule 11 explicitly instructs that the trial court order the sanctioned party "to pay to the opposing party or parties the reasonable expenses incurred." FN5 Since Spencer challenges the merits of the grounds for sanctioning her, we will now examine them.

FN5. While section 11-55-5(1) does not contain such a limit as in Rule 11, several cases which discuss the award of sanctions under the Litigation Accountability Act explicitly award the judgment of attorney's fees to a party. See e.g., In re Estate of Ladner, 909 So.2d 1051, 1055 (Miss.2004) ("The chancellor, in finding that the Litigation Accountability Act and M.R.C.P. 11 had been violated, awarded $2500 in attorneys fees and expenses to [the defendant] to be paid by [plaintiffs]."); Wheeler v. Stewart, 798 So.2d 386, 394 (Miss.2001) ("Finding no error in the circuit court's decision to grant summary judgment and award attorney's fees [pursuant to the Litigation Accountability Act] to [the defendant], this Court affirms the judgment of the Forrest County Circuit Court.")

A. Litigation Accountability Act

[7][8] ¶ 26. As noted above, the Litigation Accountability Act permits a court to impose sanctions on an attorney who "asserted any claim or defense, that is without substantial justification, or ... was interposed for delay or harassment" or if the attorney "unnecessarily expanded the proceedings by other improper conduct." Miss.Code Ann. § 11-55-5 (Rev.2002). "Without substantial justification" is defined as any claim that is "frivolous, groundless in

fact or in law, or vexatious, as determined by the court." Miss.Code Ann. § 11-55-3(a)(Rev.2002). The term "frivolous" as used in this section takes the same definition as it does under Rule 11: a claim or defense made "without hope of success." See Smith v. Malouf, 597 So.2d 1299, 1303-04 (Miss.1992); Deakle, 661 So.2d at 196. Only the first two grounds appear to be at issue in this case. The chancellor made findings as required by Section 11-55-7.

¶ 27. The chancellor's grounds for her findings under the Litigation Accountability Act can be broken down into three "claim or defense" categories: (1) Spencer's numerous filings on behalf of the mother to have the custody of the children returned to the mother and alleging that *339 the father abused their daughter, (2) Spencer's representation on behalf of the grandmother and her claim for grandparents' visitation, and (3) Spencer's claims and defenses with respect to the gag order and Section 41-21-151. After reviewing the record, we find evidence supporting the chancellor's findings that the claims concerning the dissemination of the daughter's medical records and custody claims were without substantial justification. We decline to address the chancellor's finding that the grandparents' visitation claim was without substantial justification as this is the subject of a separate appeal pending before this Court. We affirm the judgment of the chancellor finding Spencer liable for sanctions under the Litigation Accountability Act.

B. Rule 11 Sanctions

[9][10][11] ¶ 28. As noted above, Rule 11 permits a

court to award a responding party reasonable attorneys' fees and expenses when "any party files a motion or pleading which, in the opinion of the court, is frivolous or is filed for the purpose of harassment or delay." Miss. R. Civ. P. 11(b). As the rule suggests, sanctions are appropriate under this rule only when a motion or pleading has been filed. This Court has stated that a pleading is frivolous "only when, objectively speaking, the pleader or movant has no hope of success." City of Madison v. Bryan, 763 So.2d 162, 168 (Miss.2000) (quoting Tricon Metals & Servs., Inc. v. Topp, 537 So.2d 1331, 1335 (Miss.1989)). A motion or pleading is filed for the purpose of harassment or delay when the party does not have a viable claim. Deakle, 661 So.2d at 195.

¶ 29. The chancellor examined several pleadings filed by Spencer and ruled as to each. Specifically, the chancellor found the (Second) Motion to Return Custody to Mother and the Amended (Second) Motion to Return Custody to Mother to be harassment in light of the court's holding that such arguments were premature when the guardian ad litem had not yet filed his report. The chancellor also found Spencer's Motion to Require Guardian Ad Litem to File Report Returning Custody to [the mother] to be additional harassment of the guardian ad litem and unnecessary. The chancellor found Spencer's motions to lift the gag order to be frivolous because they had no hope of success under Section 43-21-151(1)(c). Finally, the chancellor found that Spencer's Motion to Disqualify and Remove Guardian ad litem, filed the first day of trial, to be "without a doubt frivolous."

¶ 30. We reviewed each of these pleadings and the

explanation offered for each filing. We also understand the posture of the case at the time when Spencer filed them. While we agree that Spencer's initial effort to have the children returned to their mother may have been a good-faith effort to reduce the trauma to the children caused by separation from their custodian, the subsequent pleadings crossed the line. After our review of the record, we cannot say the chancellor abused her discretion in finding the several pleadings filed by Spencer constituted "harassment" under the Rule. Therefore, we affirm the chancellor's judgment finding Spencer liable for attorneys' fees and costs under Rule 11 of the Mississippi Rules of Civil Procedure.

¶ 31. While we affirm Spencer's liability for attorneys' fees and costs under the Litigation Accountability Act and Rule 11, we find plain error in the chancellor's judgment awarding fees and costs in excess of the amounts actually incurred. Therefore, we vacate the judgment of the chancellor which awarded $25,000 each to the guardian ad litem and counsel for the father, and remand for a factual finding of the amount of reasonable attorneys' fees *340 and costs for the father and the guardian ad litem associated with responding to the claims and motions identified by the chancellor in her order.

II. WHETHER THE CHANCELLOR ERRED IN HOLDING SPENCER IN CRIMINAL CONTEMPT OF COURT FOR FAILING TO APPEAR AT A SCHEDULED HEARING WHERE THE EVIDENCE FAILS TO SHOW A WILLFUL FAILURE TO APPEAR AND WHERE SPENCER'S TRIAL LACKED FUNDAMENTAL ELEMENTS OF DUE

PROCESS.

¶ 32. Spencer next argues the chancellor erred in holding her in constructive criminal contempt for failing to appear at a hearing she noticed. She claims she received no notice that she would be found in contempt for this act prior to the sanctions hearing in February. She asserts that her failure to appear in court was not willful, therefore, the court erred in holding her in criminal contempt. She further argues that the law required her contempt hearing to be held in public. Finally, she claims the chancellor should not have presided over this portion of the contempt hearing because she had substantial personal involvement in its prosecution. The chancellor cited Rule 1.05 of the Uniform Chancery Court Rules as grounds to hold Spencer in contempt, and she drew her authority to impose the $100 fine and twenty-four-hour sentence from Section 9-1-17 of the Mississippi Code, which allows a maximum $100 fine and/or thirty days imprisonment. We find none of Spencer's arguments meritorious.

[12] ¶ 33. Uniform Chancery Court Rule 1.05 provides:

When any civil action has been set for, or adjourned to, a particular day or hour, all officers, parties, witnesses and solicitors whose presence is necessary for the trial shall be present promptly at the time set. Any negligent or willful failure to obey this rule shall be punished by contempt.

UCCR Rule 1.05. To hold a contemnor in contempt, the contemnor must be provided a specification of the charges against him, notice, and a hearing.

Purvis, 657 So.2d at 798. We first address Spencer's arguments concerning notice and willfulness.

[13] ¶ 34. Spencer did not raise an objection to her lack of notice or specification of the charges at the pre-trial hearing on contempt and sanctions. She argued the merits of this contempt at the pre-trial hearing, and the chancellor permitted her to call witnesses in her own defense. She did not object to testimony about her failure to appear on this date or move for a continuance in order to prepare to respond to this charge. We find that Spencer waived her right to notice and specification of the charge against her. See Dennis, 824 So.2d at 610-11; Isom v. Jernigan, 840 So.2d 104 (Miss.2003). As the plain text of the rule indicates, an attorney need only be negligent in failing to appear for the chancellor to give grounds for holding her in contempt. Since there is no requirement that Spencer's conduct be willful under this rule, we find no merit to her argument that the contempt judgment should be set aside for lack of willfulness on her part.

¶ 35. Spencer argues that her contempt hearing should have been held in public and cites In re Oliver, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948), for the rule that criminal contempt trials cannot be held in secret, grand-jury-style proceedings where the accused is denied the benefit of counsel and the presence of friends and relatives. Id. at 333 U.S. 271-72, 68 S.Ct. 499. In that case, a witness called to testify at a one-judge grand jury proceeding*341 was found in contempt and sentenced to prison immediately after his testimony because it did not "jell" with other testimony given before the judge. In finding this procedure violated

the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the Supreme Court stated,

> But, unless in Michigan and in one-man grand jury contempt cases, no court in this country has ever before held, so far as we can find, that an accused can be tried, convicted, and sent to jail, when everybody else is denied entrance to the court, except the judge and his attaches. And without exception all courts have held that an accused is at the very least entitled to have his friends, relatives and counsel present, no matter with what offense he may be charged. In Gaines v. Washington, 277 U.S. 81, 85-86, 48 S.Ct. 468, 72 L.Ed. 793, this Court assumed that a criminal trial conducted in secret would violate the procedural requirements of the Fourteenth Amendment's due process clause, although its actual holding there was that no violation had in fact occurred, since the trial court's order barring the general public had not been enforced. Certain proceedings in a judge's chambers, including convictions for contempt of court, have occasionally been countenanced by state courts, but there has never been any intimation that all of the public, including the accused's relatives, friends, and counsel, were barred from the trial chamber.

Id. (footnotes removed). "Cases within the jurisdiction of courts martial may be regarded as an exception. Whatever may be the classification of juvenile court proceedings, they are often conducted without admitting all the public. But it has never been the practice wholly to exclude parents, relatives, and friends, or to refuse juveniles the benefit of counsel." Id. at 266 n. 12, 68 S.Ct. 499

(citations removed).

[14] ¶ 36. We find this matter distinguishable from In re Oliver. Spencer had separate counsel to represent her interests at the hearing on contempt and sanctions. She did not object to the private nature of the hearing at the time it occurred. The court permitted her to call witnesses in her defense and to testify on her own behalf. Finally, the chancellor rescinded the portions of her contempt order sentencing Spencer to imprisonment. The precedent Spencer cites makes allowance for the fact that youth court proceedings are different from matters generally before the court. We find that it is not a violation of the Due Process Clause of the Fourteenth Amendment to hold contempt hearings in youth court abuse proceedings out of the public eye under these circumstances.

[15] ¶ 37. Finally, Spencer argues the chancellor should have recused herself from hearing this contempt charge. She argues the chancellor became personally and substantially involved in the prosecution of this contempt charge, such that another judge should have been appointed to consider it. Mayberry v. Pennsylvania, 400 U.S. 455, 465-66, 91 S.Ct. 499, 505, 27 L.Ed.2d 532 (1971). On this charge, we disagree. Spencer filed a notice for a hearing which she completely failed to attend. The next time Spencer appeared before the chancellor, the chancellor took up this contempt charge, among others. At the conclusion of the chancellor's consideration of this matter, she sentenced Spencer to pay a $100 fine or be incarcerated for twenty-four hours, a sentence substantially below the maximum allowed by

statute.

¶ 38. After reviewing the record, we find the chancellor did not become substantially involved with the prosecution of this contempt charge such that we doubt *342 the chancellor maintained the detachment necessary for ruling on this contempt. See Purvis v. Purvis, 657 So.2d 794, 798 (Miss.1994). The sentence further supports this conclusion. Therefore, we affirm the judgment and sentence of the chancellor finding Spencer in contempt for failing to appear at the January 9 hearing.

III. WHETHER THE CHANCELLOR ERRED IN HOLDING SPENCER IN CRIMINAL CONTEMPT FOR PROVIDING HER CLIENT THE GRANDMOTHER COPIES OF COURT FILES BEFORE THE PRE-TRIAL MOTIONS AND TRIAL ON THE MERITS AND AFTER TRIAL ON THE MERITS.

¶ 39. Spencer next argues that the chancellor erred in finding her in constructive criminal contempt for violating the Youth Court Act and the gag order entered by the chancellor on September 20, 2005. She raises as error the same arguments concerning notice, the requirement of a detached chancellor and a public trial. She also raises a challenge to the sufficiency of the evidence of her guilt. The rules discussed above serve as a basis for analyzing Spencer's claims under this argument and will not be repeated here. We now address her arguments concerning notice, the impartiality of the chancellor, and due process.

¶ 40. The record reflects the guardian ad litem

sought to hold Spencer in contempt for supplying his report to the grandmother, because the grandmother sent the report to the Mississippi Bar when filing a complaint against him. In post-trial motions, the father sought to have Spencer held in contempt for the appearance of confidential information on the internet. We find both pleadings provided Spencer sufficient notice of this contempt charge against her. We also note that she appeared and defended herself through counsel against these charges. By taking these actions, Spencer waived whatever deficiency existed with respect to the notice. See Dennis, 824 So.2d at 610-11; Isom, 840 So.2d at 106.

¶ 41. Furthermore, the chancellor did not prosecute these contempt charges. From the record, we can find no indication the chancellor became substantially involved in the prosecution of this contempt charge. See In re Williamson, 838 So.2d 226, 237 (Miss.2002). We find no error in the fact the chancellor did not recuse herself from hearing these contempt charges. For the reasons discussed above, we find no due-process violation occurred simply because the contempt hearing was subject to the confidentiality statutes applicable to proceedings in Youth Court. None of these grounds have merit. We now examine the sufficiency of the evidence.

[16] ¶ 42. The gag order entered by the chancellor on September 20, 2005, provided, "The parties themselves will be enjoined from disclosing any information to third parties and that injunction would go towards their agents as well." The written order entered by the chancellor on November 9 provided, inter alia: "Neither the Parties, nor their attorneys, nor their agents shall discuss the

proceedings in this Court with any person not directly associated with the Parties or their attorneys."

¶ 43. We reviewed the verbal and written gag orders and find them too vague to enforce. See Mayor of Clinton v. Welch, 888 So.2d 416, 420-24 (Miss.2004). We are particularly unable to determine with reasonable certainty whether the grandmother qualifies as a "third party" or "agent" under the chancellor's first order or a "person not directly associated with the Parties or their attorneys" under the chancellor's written order. We conclude these orders are not sufficiently explicit or clear *343 to give fair notice to men of common intelligence of the conduct which would offend these orders. Id. at 422. Therefore, the chancellor's judgment holding Spencer in contempt for violating these orders is in error. We next examine whether the facts support the chancellor's contempt judgment against Spencer for violating the Youth Court Act.

[17] ¶ 44. Section 43-21-151(1)(c) of the Mississippi Code allows the chancery court to assume jurisdiction over a youth court matter under certain circumstances. Miss.Code Ann. § 43-21-151(1)(c) (Rev.2004). "The proceedings in chancery court on the abuse charge shall be confidential in the same manner as provided in youth court proceedings." Id. See alsoMiss.Code Ann. §§ 43-21-203(6); 43-21-257(1); 43-21-259 (Rev.2004). Section 43-21-153(2) gives the youth court the power to hold in contempt of court a party who willfully violates, neglects, or refuses to obey an order and to issue a fine not to exceed $500 and/or to imprison the violator for not more than ninety days. Miss.Code Ann. § 43-21-153

(Rev.2004).

¶ 45. The chancellor held Spencer in contempt for providing the grandmother copies of chancery court filings and orders in violation of the gag order. The chancellor split the contempt in two: the violation which occurred before the trial and the one that occurred afterward. In the contempt order, the chancellor identified only one instance in which Spencer supposedly disclosed confidential information to the grandmother and violated the gag order. This was in an electronic mail message from Spencer to the mother and grandmother in January 2006, to which Spencer attached copies of the order compelling the mother's appearance at trial, the father's motion for sanctions, motion to strike defenses, and witness subpoenas, and the guardian ad litem's second interim report and motion for sanctions. The chancellor fined Spencer $500 and ordered her to be incarcerated for ninety days for the violation before trial. The chancellor imposed an identical sentence for the violation after trial. In that case, the chancellor relied upon Spencer's admission that she sent a copy of the court's "Bench Opinion and Judgment" regarding custody to the grandmother.FN6 On reconsideration, the chancellor vacated the portions of her order that sentenced Spencer to imprisonment.

FN6. We are troubled that a chancellor would order Spencer's attorney to review Spencer's files for evidence related to this sanction and then report such evidence back to the court. For reasons unknown to us, this is not alleged as error on appeal.

¶ 46. The guardian ad litem filed a motion to hold

Spencer in contempt for disseminating his second interim report prior to the date of the electronic mail sent by Spencer. Because the motion pre-dated the electronic mail message in the record, the message cannot serve as a basis for holding Spencer in contempt under the charge made by the guardian. Furthermore, while Spencer's email did include the guardian's report, arguably a youth court record, it was directed to the mother. Spencer's unrebutted testimony was that, by sending a courtesy copy of this mail message to the grandmother, she hoped to place the documents in the mother's possession. At that time, it had been more than a month since Spencer had had contact with the mother. The record indicates the grandmother paid Spencer for her representation of the mother. The grandmother herself was Spencer's client and had a right to be informed of the outcome of the custody hearing. We find the evidence insufficient to show that Spencer's conduct was a willful or contumacious violation of the Youth Court Act *344 beyond a reasonable doubt. We therefore reverse the judgment of the chancellor holding Spencer in contempt for violating the gag orders and Youth Court Act, and hereby render judgment in favor of Spencer.

IV. WHETHER THE CHANCELLOR ERRED IN HOLDING SPENCER IN CONTEMPT FOR ISSUING SUBPOENAS DUCES TECUM IN VIOLATION OF MISSISSIPPI CODE ANNOTATED § 43-21-151.

[18] ¶ 47. Spencer finally argues the chancellor erred in holding her in contempt for causing several subpoenas to issue after the December 5 hearing. She asserts the chancellor erred because Spencer's

trial was not public, that Spencer was not given adequate notice of the charge against her, and that the chancellor should not have sat in judgment. For the reasons discussed above, we find no merit to the argument that the chancellor's judgment holding Spencer in contempt should be set aside because it was made while under the confidentiality provisions of the Youth Court Act. We also find, for the reasons discussed above, that Spencer waived the requirement that she be given notice, because she argued the merits of her case without objecting to the lack of notice at the hearing. However, we agree it was error for the chancellor to sit in judgment of this contempt charge.

[19][20][21] ¶ 48. The conduct for which the chancellor held Spencer in contempt occurred both in the chancellor's presence and outside the chancellor's perception. Spencer made the misrepresentation concerning the nature of the subpoenas in person to the chancellor to obtain her approval to have them issued. The language which appeared within the subpoenas and the request that the respondent produce documents were facts outside the chancellor's personal knowledge. Therefore, we find the judgment of contempt against Spencer for violating the order regarding subpoenas is criminal in nature and is one of constructive, rather than direct, contempt. See Dennis, 824 So.2d at 608-609. Cf. In Interest of Holmes, 355 So.2d 677, 678 (Miss.1978) ("where there is doubt whether the alleged contempt was direct or constructive, it should be regarded as the latter"). As we stated in Dennis:

If the primary purpose of the contempt order is to

enforce the rights of private party litigants or enforce compliance with a court order, then the contempt is civil. The contemnor may be jailed or fined for civil contempt; however, the contemnor must be relieved of the penalty when he performs the required act. Criminal contempt penalties, on the other hand, are designed to punish the defendant for disobedience of a court order; punishment is for past offenses and does not terminate upon compliance with court order.

Dennis, 824 So.2d at 608 (citations removed). As noted above, this Court reviews criminal contempt citations ab initio.

¶ 49. After Spencer caused several subpoenas to be issued for the September 20 trial and the hearing on the motion to quash the hospice subpoena, the chancellor enjoined Spencer from causing more subpoenas to issue. The chancellor stated on the twentieth, "I will go ahead and enter a blanket order that requires all subpoenas to be approved by the Court before they are issued...." A later written order provided, "[The mother] shall not issue additional subpoenas with [sic] prior approval of this Court...."

¶ 50. At the December 5 hearing, Spencer asked the court's permission to issue trial subpoenas for the upcoming trial date:

*345 [MS. SPENCER]: May I go ahead and have my trial subpoenas issued?

THE COURT: Okay. What all are they for?

MS. SPENCER: Just for a variety of individuals to-

THE COURT: Have you given them to Mr. Parrish?

MS. SPENCER: No, I have not.

THE COURT: I mean, we had some problems with subpoenas before. These are just witness subpoenas?

MS. SPENCER: These are witness subpoenas.

THE COURT: Any problem with that Mr. Kramer?

MS. SPENCER: I mean, Your Honor, he can file a motion to quash and then it can be heard on January 9 and it could be resolved prior to trial so what could be the harm?

THE COURT: Well, I don't see a problem with witness subpoenas being issued. Do you, Mr. Kramer? I mean, there was some problem with the subpoena duces tecum-

MS. SPENCER: Yes.

THE COURT:-before.

MS. SPENCER: Yes, there were.

MR. KRAMER: Yes, ma'am.

THE COURT: Go ahead and get the subpoenas issued. I don't have a problem with that.

Counsel for the father was not present at this hearing. Spencer next caused four subpoenas entitled "Trial Subpoena and Subpoena Duces

Tecum" to issue from the chancery court directed at four DHS employees: (1) Jackie Odom; (2) John Webb O'Bryant, DHS regional director; (3) Lisa Robinson; and (4) Brunette Jones, the caseworker for the daughter. The subpoenas commanded them to be present at trial and to produce documents. The subpoenas described the documents as "[t]he July 2004 investigation file maintained by the DHS concerning [the daughter's] sexual abuse which occurred in approximately June and July 2004, including but not limited to the investigation, any conclusions, the original or a copy of [the daughter's] note and drawing of an erect penis which stated, 'For Mamma's eyes only; my privates hurt real bad', and all other documents contained in the file and a copy of the DHS file concerning [the daughter] and [the son] being placed in foster care." She also caused one subpoena to issue for the Quitman School District.

¶ 51. In holding Spencer in contempt, the chancellor held the following:

In issuing the above subpoenas duces tecum, Attorney Spencer made a material misrepresentation to this Court and violated this Court's order that Subpoena Duces Tecum be submitted to the Court for review and approval prior to their issuance. By including the graphic language in [the exhibit to the summons], she also disseminated confidential information from this civil action in violation of § 43-21-151(1)(c).

She exposed that information not only to the subpoenaed witnesses, but also the process server hired to serve the subpoenas. Such conduct on the

part of an attorney of law cannot go unpunished. It should also be noted that the "drawing of the erect penis" is Attorney Karen Spencer's interpretation of the daughter's drawing on the note she gave her mother. Donna Moore, the first counselor that talked to the daughter, reported that the child described the drawing as a girl with long hair. The daughter had drawn tears on the girl's face, and was afraid she would upset her mother so she blacked out the face and drew smiley faces around the drawing.

*346 ¶ 52. The chancellor fined Spencer $100 for causing a subpoena directed to Quitman School District to issue without prior court review or approval, but which did not reveal confidential information. The chancellor fined Spencer $500 and sentenced her to ninety days imprisonment for each subpoena, for causing subpoenas to issue which were directed to the DHS employees. Finally, the chancellor's order was to be sent to the Mississippi Bar. On reconsideration, the chancellor vacated that portion of her judgment which sentenced Spencer to imprisonment.

¶ 53. Prior to the hearing on contempt, neither the father nor the guardian ad litem requested the chancellor hold Spencer in contempt for violating the chancellor's order regarding subpoenas. While Spencer waived notice of this contempt charge by appearing and defending herself through separate counsel, it appears from the record that the chancellor instigated and prosecuted this contempt charge. It was improper for the chancellor to sit in judgment where she had substantial personal involvement in the prosecution of this charge. In re Williamson, 838 So.2d 226, 237 (Miss.2002).

Therefore, we find the chancellor should have recused herself from hearing this contempt matter. The chancellor's contempt judgment finding Spencer violated the order regarding subpoenas is hereby reversed, and this charge is remanded for a new trial. Id.

CONCLUSION

¶ 54. For the reasons discussed above, we find the chancellor abused her discretion when awarding monetary sanctions against Karen Spencer in excess of the amount authorized by the Litigation Accountability Act and Rule 11 and awarding those sanctions to the father's attorney instead of to the father. We vacate the sanction judgment and remand this matter for a finding as to the reasonable amount of attorneys' fees and costs incurred by counsel for the father and the guardian ad litem for responding to the claims and pleadings examined in the chancellor's order. The reasonable amount of attorneys' fees shall be awarded to the father. The judgment holding Spencer in contempt for failing to appear at the January 9 hearing is affirmed. The judgment holding Spencer in contempt for violating the gag order is not supported by the substantial evidence and is reversed. Judgment is hereby entered in favor of Karen Spencer on this charge. Since it was error for the chancellor to sit in judgment on the charge of contempt for violating the chancellor's order regarding subpoenas, this judgment is reversed and this charge is remanded for a new trial.

¶ 55. AFFIRMED IN PART; REVERSED AND RENDERED IN PART; REVERSED AND

REMANDED IN PART; AND VACATED AND REMANDED IN PART.

SMITH, C.J., CARLSON, GRAVES, DICKINSON AND LAMAR, JJ., CONCUR. EASLEY, J., CONCURS IN PART AND DISSENTS IN PART WITHOUT SEPARATE WRITTEN OPINION. DIAZ, P.J., AND RANDOLPH, J., NOT PARTICIPATING

APPENDIX B

IN THE CHANCERY COURT OF CLARKE COUNTY
STATE OF MISSISSIPPI

DAVID CHANDLER PLAINTIFF

VS. CIVIL ACTION FILE NO. 00-038S

DONNA CHANDLER DEFENDANT

MEMORANDUM OPINION AND JUDGMENT

This Court conducted hearings of pre-trial motions on February 3,6, 7, 8, and 9, 2006, and conducted the trial on the merits on February 10, 2006. The Court rendered a Bench Opinion and Judgment on February 10, 2006, and reserved ruling on the sanctions motions filed by David Chandler and the Guardian ad Litem, Edward N. Kramer, III, due to the volume of the case file which required review by the Court prior to a ruling on the request for sanctions against Donna Chandler and her attorney, Karen H. Spencer. Subsequently, the Court conducted a hearing on February 28, 2006, on the Motion to find Attorney Karen Spencer in Contempt filed after confidential information from this civil action appeared on the Internet.

The Court required Attorney Spencer's attorney, Attorney Cynthia Speetjens to make a report to the Court concerning communications between Attorney Spencer and her client Sundra Girard, and Attorney Spencer and Speetjens applied to the Supreme Court of Mississippi for an emergency stay of this Court's proceedings, so there has been a delay in the issuance of this opinion due to the order issued by the Supreme Court.

The Court will address the Motion for Contempt and Attorney fees filed by Attorney Kramer on January 26, 2006, the Motion for Sanctions and Costs filed by Mr. Chandler on January 27, 2006, the Response to Motion for Sanctions filed by Attorney Karen Spencer on her own behalf and on behalf of Donna Chandler (the Court previously denied the Counter Motion for Sanctions) filed on February 2, 2006, and the Motion to Find Attorney Karen Spencer in Contempt which was filed on February 21, 2006.

PROCEDURAL HISTORY

The parties to this civil action were divorced by Judgment Granting Divorce and Related Relief entered on December 13, 2000, and dated December 5, 2000. Donna and David agreed in their Separation, Child Custody Support and Property Settlement Agreement that they should have joint legal custody of the two minor children, Kayleigh, born January 7, 1995, and Michael, born October 16, 1997. David was awarded reasonable and specific rights of visitation pursuant to the "Chandler Visitation Schedule" attached to the property settlement agreement.

David initiated the current proceedings by filing a Petition for Modification and to Cite Defendant in Contempt on October 29, 2004. Donna had moved to Texas and had not filed the required Chancery Court Rule 8.06 notice with regard to her change of address, and process was not had on Donna until November 30, 2004. The motion was noticed for January 13, 2005, and Attorney Lawrence Primeaux entered his appearance on behalf of Donna on January 10th, 2005, and requested a continuance. At the same time, Attorney Primeaux filed a Motion for Appointment of Guardian ad Litem, as well as an Answer and Counterclaim. The counterclaim

included allegations concerning sexual abuse of Kayleigh by her father. The Court appointed Attorney Edward N. Kramer as Guardian ad Litem by order entered on the 7th day of February, 2005. This order set the case for trial on April 18, 2005 and scheduled a conference for February 10, 2005. A subpoena issued at David's request to compel Donna's attendance at the conference, and Donna responded with a request to quash the subpoena. Following a conference with the Court on February 10, 2005, an Agreed Order was entered requiring Donna to appear with the children at Attorney Kramer's office on March 21, 2005.

Attorney Kramer was unable to complete his report in time for the April trial date, and the trial was rescheduled for July 25, 2005. Donna's attorney objected to the July setting, which was scheduled without notice to Mr. Primeaux nor Attorney Kramer, and the terms of the order allowed for objection due to the lack of notice. The trial was rescheduled for September 19, 2005.

In June 2005, David filed a motion for summer visitation. An order was entered on July 11, 2005, which allowed David supervised visitation with his children. This order was entered over the objection of Donna's attorney, Lawrence Primeaux. The visitation required by this order was to take place commencing July 16, 2005. The visitation did not take place because Donna did not comply with this Court's order. Donna applied for and received a Temporary Ex Parte Protective Order in the State of Texas on July 18, 2005. Attorney Primeaux filed his motion to withdraw as Donna's lawyer on July 19, 2005. On July 29, 2005, David filed his Amended Petition for Modification of Custody and to Cite Defendant in Contempt. An Agreed Order allowing Attorney Primeaux to withdraw and substituting

Attorney Joseph A. Kieronski, Jr. as Donna's attorney was entered on August 15, 2005. On the same day, Attorney Kramer filed his preliminary Report in which he expressed grave concerns regarding possible manipulation of the child Kayleigh with respect to the allegations against David. He also stated that he would be unable to properly conduct his investigation without access to the children.

On August 16, 2005, this Court entered an Order Sua Sponte directing Donna Chandler to deliver the children to Attorney Kramer's office at 3:00 p.m. on Friday, August 19, 2005, so that the Department of Human Services could assume custody of the children. The attorneys of record approved this order as to form.

On August 19, 2005, Sundra Girard, represented by Attorney Karen Spencer, filed by facsimile transmission her Motion to Intervene and/or Modification and/or for Reconsideration or Clarification of Order Sua Sponte. This Motion was joined in by Donna Chandler, who at the time was represented by Attorney Kieronski. This motion had attached to it confidential medical and psychological records concerning the minor child Kayleigh Chandler. Set out in the body of the motion is an assertion that the Motion is filed "to temporarily suspend the operation of the August Order." Attorney Karen Spencer signed this pleading as attorney for Sundra Girard and Donna Chandler, and attached a certificate of service to Attorneys Kieronski , Primeaux, and Kramer.

On August 20, 2005, a Saturday, Attorney Karen Spencer, on behalf of Sundra Girard and Donna Chandler, via fax filed and noticed Attorneys Kieronski, Parrish (David Chandler's attorney) and Kramer, a Motion for Emergency/Expedited Hearing on Motion to

Intervene and/or for Modification and/or Clarification of Order Sua sponte. The case was docketed to be heard on Monday, August 22, 2005 at 9:00 a.m. On August 22, 2005, Attorney Karen Spencer filed an affidavit of Donna Chandler in support of the Motion for Reconsideration, and hand-delivered copies to Attorneys Kieronski, Parrish, and Kramer. Attorney Kieronski presented to the Court his Order Allowing Withdrawal and Substitution of Counsels the morning of August 22, 2005.

The Court conducted a hearing on the Motion for Intervention and for Modification and/or for Reconsideration on August 22, 2005, and denied Sundra Girard's request to intervene and denied the Motion for Reconsideration. On the same day, the case was set for trial on September 20 and 21, 2005.

On August 24, 2005, Attorney Spencer caused trial subpoenas to issue for Loren Larson, University of Mississippi Medical Center, Collin County Children 's Advocacy Center, Bobbie Owen, Pat Graves, Jay Stallings, Tammy Larson, Rev. Glenn Lafferty, Chelsea Stallings, H.C. Watkins Memorial Hospital, Tammy Henderson, M. D., and Jack McHenry, M.D. On August 26, Attorney Spencer caused subpoenas to be issued for Dr. David Grantham from Shepherd's Staff and for the Wesley House.

After the hearing on August 22, 2005, Attorney Karen Spencer via facsimile and first class mail sent a letter dated August 25, 2005 to Attorney Kramer with copies to the Chancery Clerk, Donna Chandler, and Sundra Girard. She had begun her demands on the Guardian ad Litem with this letter, and included Sundra Girard in the process despite the provisions of Section 43-21-151(1)(c).

On September 2, 2005, Attorney Spencer caused to issue a Subpoena for Deposition and Subpoena Duces Tecum for Dr. L. Mullins, Dr. Magolia Castilla, or other physician who could testify with regard to medical records of the University Medical Center in Jackson, Mississippi.

On the same day, Attorney Stewart Parrish on behalf of David Chandler filed a Motion to Quash the deposition subpoena due to his unavailability on the date the deposition was scheduled (September 9, 2005) and due to the fact that it was scheduled so closely to the trial date. Attorney Spencer sent a letter to Attorney Parrish concerning the deposition schedule, attaching copies of Kayleigh Chandler's confidential medical records, and copied the Court and Attorney Kramer.

On September 6, 2005, Attorney Spencer caused additional trial subpoenas to issue to Julie Wright, Counselor. On September 8, 2005, Attorney Stewart Parrish caused a subpoena to issue for Kenny Graham of the Lauderdale County Sheriff's Department.

Donna Chandler filed her Answer to Amended Petition for Modification, Motion to Dismiss and Amended Counterclaim on September 8, 2005. Also on September 8, 2005, Attorney Karen Spencer caused to issue trial subpoenas and subpoenas duces tecum for Stephen Adcock, Heartfelt Hospice, David Chandler, Faith Christian Church, Texas Department of Family and Human Services, Clarke County Department of Human Services, and Sacky Holdiness.

The Court scheduled a status conference for September 12, 2005, and Donna Chandler filed her Status Report and Motion for Change in Custody on September 9, 2005. Attached to this status report and motion were

numerous exhibits, including copies of Kayleigh's confidential medical records.

On September 12, 2005, Donna filed a Response to David's Motion to Quash the Deposition Subpoena and attached copies of Kayleigh's confidential medical reports along with other exhibits.

On September 12, 2005, Donna by her lawyer caused to be issued a trial subpoena and subpoena duces tecum for David Chandler and Attorney Karen Spencer served the subpoena on David in the courtroom.

On September 16, 2005, Attorney Spencer caused to issue a trial subpoena duces tecum for Harold Brasfield. Heartfelt Hospice, through counsel, filed a Motion to Quash the Trial Subpoena and Subpoena Duces Tecum caused to be issued by Attorney Karen Spencer. The Guardian ad Litem did not have sufficient time to finish his report in time for the September 20, 2005 court date, and the Court continued the trial to allow additional time for the report to be completed. The progress on the Guardian ad Litem investigation was impeded in part by Hurricane Katrina, which caused damage to the office of the psychologist originally scheduled to interview the children (on August 29, 2005) and which caused damage to Attorney Kramer's office and equipment.

The order on the September 20th proceedings was entered by the Court on November 14, 2005. In this order the case was set for trial on February 3, 6, 7, 8, and 9, 2006. Although this civil action was already confidential by operation of law, Miss. Code Ann. Section 43-21-151(l)(c), this Court specifically ordered the court file sealed during the proceedings on September 20, 2005, and the Order entered November 14 contained the same confidential requirement.

On behalf of Donna, Attorney Karen Spencer filed her Second Motion t o Return Custody to Mother on September 27, 2005. Again, confidential medical reports of Kayleigh Chandler were attached, among other exhibits. The Court had scheduled a status conference for October 6, 2005, in Meridian, and Attorney Karen Spencer noticed her Second Motion for a hearing at the time of the status conference.

On September 30, 2005, Donna filed her Motion for Emergency/Expedited Hearing on Motion to Return Custody to Mother. Due to Lauderdale County conflicts on October 6, 2005, the status conference was continued and Attorney Spencer renoticed it for October 10th in Clarke County. Attorney Parrish objected to the setting due to his obligation for a trial in Kemper County.

On October 12, 2005, Attorney Karen Spencer, on Donna's behalf filed an Amended (Second) Motion to Return Custody to Mother. Again, there were numerous attachments, including copies of Kayleigh's confidential medical and psychological reports. According to Attorney Spencer's testimony, the original filing had a mis-ordering of the attachments, and this motion was filed to correct the mis-ordering . The motion and its attachments take up over an inch of space in the court file, and this is the second filing of the same motion.

On October 18, 2005 by fax, and on October 19, 2005 by mail, Donna filed a Motion for Order Scheduling the Trial of all pending Issues. On October 19, 2005, Donna, by Attorney Spencer, filed a Motion to Require the Guardian ad Litem to File Report Returning Custody to Donna M. Chandler.

The court file in this case swelled to tremendous proportions not only due to the number of filings, but

also due to the vast quantity of attachments which were filed unnecessarily, and also due to the fact that almost all the filings made by Attorney Karen Spencer were first faxed and then mailed. There is a tremendous amount of duplication in the court file.

Volume VI of the court file opens with a Motion to Terminate visitation filed by David Chandler. His motion includes a copy of a letter from Attorney Karen Spencer to Attorney Stewart Parrish asking him to join her in bringing pressure to bear on the Guardian ad Litem, Attorney Nick Kramer.

On November 7th, 2005 by fax, and again November 8th, 2005 by mail, Donna through Attorney Karen Spencer filed a Motion for Contempt.

On November 7th, the Court set a due date of December 5th, 2005, for the Guardian Ad Litem's report. Attorney Kramer prepared an order concerning the due date of the Guardian ad Litem report, and in paragraph III of that order, Attorney Spencer modified the language of the order to contemplate return of custody to the "mother" rather than "natural parents" as set out by the Guardian Ad Litem.

Attorney Karen Spencer filed a Notice of Status Conference for December 5th, 2005, and Attorney Parrish objected due to the fact that he was involved in a murder trial in Grenada at the date and time.

On November 23, 2005, Attorney Stewart Parrish, on behalf of David Chandler caused to issue a Subpoena Duces Tecum for Donna Chandler's personal computer for a hard drive examination.

On November 28, 2005, David filed a Motion to produce for Forensic Evaluation, requesting that the original note

from Kayleigh to her mother be tendered so that Forensic testing of the original note could be performed. Via Federal Express Next Day delivery, Attorney Karen Spencer sent a letter to this Judge with a copy for the court file, in which she described with specificity the contents of the note. This letter dated, November 28, 2005, does not indicate that a copy was sent to Attorneys Parrish or Kramer.

On December 1, 2005, Donna filed a Motion to Lift the Gag Order, alleging that David had violated the gag order and also alleging confidentiality of the proceedings violated the Mississippi Constitution and the United States Constitution. On December 1, 2005, Attorney Karen Spencer noticed the depositions of David Chandler and Attorney Kramer, the Guardian ad Litem, and signed the notices as Attorney for "Donna Chandler & Sundra Girard."

In response to the Deposition Notice, Attorney Kramer filed a Motion for Direction and Protective Order on December 1, 2005.

On December 2, 2005, Donna by her attorney filed her "Response in Opposition to Motion for Forensic Evaluation." Attorney Spencer also filed discovery requests.

On December 5, 2005, Attorney Kramer filed his Interim Report of Guardian ad Litem, in which he recommended that custody of the two minor children remain in the Clarke County DHS, with placement in the home of the mother, Donna Chandler, in Quitman, Mississippi, with liberal visitation with the father David Chandler. The Court in the hearing held on December 5, 2005 asked Attorney Spencer if she and her client were agreeable to the recommendation, and receiving Attorney Spencer's

affirmative response, the Court directed Attorney Spencer to draft the order returning physical custody to Donna Chandler. The Order presented by Attorney Spencer did not specifically reserve legal custody in the Department of Human Services.

On December 13, 2005, Attorney Karen Spencer filed a response to the Subpoena issued by David Chandler for Donna Chandler's computer as follows: "Donna does not own a computer." The transcript of the proceedings held on September 20, 2005 included Attorney Spencer asking Donna whether she brought her computer from Texas and Donna's response, "I did." See page 46, lines 20-22 in the transcript which was attached as Exhibit L to Donna's (Second) Motion to Return Custody to Mother, and her Amended (Second) Motion to Return Custody to Mother.

The Guardian ad Litem prepared and presented to the Court a Revised Order Returning Custody to Donna Chandler which reflected the Court's ruling that legal custody was to remain with the Clarke County DHS with physical custody to Donna Chandler, and attached a copy of the transcript of the proceedings which took place on December 5, 2005.

Attorney Karen Spencer expressed surprise that the Court had made that ruling and said she was "amazed" to read the transcript of the proceedings which reflected that legal custody was to remain with DHS. Attorney Spencer testified that proceedings were had prior to the opening of the record, but the Court Reporter's notes and back-up audiotapes indicate otherwise. A summary of Attorney Spencer's version of the events contained in her letter to Attorney Kramer dated December 15, 2005 and attached to her Response to sanctions Motions filed against her by Attorneys Kramer and Parrish.

Due to Attorney Spencer's faulty recollection of the proceedings on December 5th, Attorney Kramer had the proceedings transcribed and presented the Revised Order to the Court. By that time Donna Chandler had absconded with the two minor children. DHS's investigation revealed that passports had been obtained for the children shortly after their custody was placed with DHS.

The transcript also reflects Attorney Spencer's request of the Court that she be allowed to issue trial subpoenas. She classified the subpoenas as witness subpoenas, but the subpoenas included subpoenas duces tecum and the graphic description of Kayleigh's note. The Court specifically asked Attorney Spencer if she had given them to Attorney Parrish, and she had not, and then asked Attorney Spencer if they were " just witness subpoenas" and Attorney Spencer stated "These are witness subpoenas." See page 5 of the December 5 transcript, lines 10 through 22.

Attorney Karen Spencer on December 5, 2005 issued additional trial witness subpoenas for Gary Riley, Attorney Larry Primeaux, Harold Brassfield, Donna Moore and Melanie Chandler. She issued a trial subpoena and subpoena duces tecum on Jackie Odom of the Clarke County DHS and included in the issued subpoena a graphic description of the note given by Kayleigh to her mother. She issued a subpoena duces tecum for the Quitman School District. Another subpoena was issued at Attorney Spencer's request for John Webb O'Bryant, MDHS Regional Director and included a graphic description of the note given by Kayleigh to her mother. Another such subpoena with the graphic description was issued at Attorney Spencer's request for Lisa Robinson of the DHS, and a similar

subpoena with the same graphic description was issued for Brunette Jones of the DHS.

These subpoenas duces tecum were not submitted to the Court for approval as required by the rulings concerning subpoenas made on September 20, 2005 and Attorney Spencer made a misrepresentation to the Court when she asked for leave to issue the subpoenas.

On December 13, 2005, Attorney Spencer on behalf of Donna Chandler noticed all pending motions for hearing at 10:00 am on Monday, January 9, 2006. Attorneys Parrish and Kramer appeared for court on that day, but Attorney Karen Spencer failed to appear. On January 17, Attorney Spencer filed a Motion to Correct Factual Errors or Omissions in the Record, alleging that the record did not include information that she conveyed to the Court Clerk on the telephone.

On January 17, 2006, Attorney Spencer filed her Motion to Withdraw as Attorney of Record due to the fact that Donna Chandler could not be located.

The Guardian ad Litem filed his Second Interim Report on January 26, 2006. He was unable to complete a final report due to the fact that Michael and Kayleigh Chandler were removed from school and taken from this Court's jurisdiction on the day following the entry of the December 5, 2005 Order which omitted the provision that the children remain in the legal custody of DHS and that physical custody should be with Donna Chandler in Quitman, Mississippi.

Attorney Kramer also filed a Motion for Contempt and Attorney Fees on January 26, 2006, and attached a letter of Attorney Karen Spencer to him dated October 26, 2005 as an example of harassment and threats he asserts he received at Attorney Karen Spencer's hands. Attorney

Parrish, on behalf of David Chandler, filed a Motion for Sanctions and costs invoking MRCP Rule 11, and the Mississippi Litigation Accountability Act, Section 11-55-1 et seq. Attorney Spencer filed her Response to Motion for Sanctions and Counter Motion for Sanction on February 2, 2006. Attorney Spencer also filed a Response to David's Motion to Strike Donna's pleadings, and a Response t o Kramer's Motion for Contempt and filed a Counter Motion to Disqualify and Remove Guardian ad Litem.

Hearings on the motions were conducted February 3, 6, 7, 8, and 9, 2006. The Court ruled on all of the motions except the Contempt Motion filed by Attorney Kramer and the Sanctions Motion filed by Attorney Parrish. The Court made its ruling on the merits of the case from the bench on February 10, 2006, which was transcribed and entered as the court's Judgment on February 14, 2006. The Court prepared a Judgment corresponding with Bench opinion and Judgment to avoid dissemination of the Bench Opinion in which contained confidential information.

Attorney Karen Spencer filed a Motion to Lift the Gag Order for a Specific Purpose on February 13, 2006. Her signature is dated February 10, 2006, the final day of the trial on the merits. On the same date, Attorney Spencer filed a Motion to Lift Gag Order, also signed on February 10, 2006. This Motion mirrored the prior motion Attorney Spencer filed requesting lifting the gag order.

David Candler filed a Motion to Find Attorney Karen Spencer in contempt which was heard on February 28, 2006. Attorney Spencer filed her Response to Find Attorney Karen H. Spencer in Contempt on February 22, 2006. Included in her response was this statement: "Spencer questions whether the youth court provisions

which prohibit discussing the proceedings apply in a Chancery Court matter such as this civil action."

Prior to the hearing held on February 28, 2006 and prior to the court ruling of the pending motions which had been taken under advisement, Attorney Spencer, on behalf of Donna Chandler, filed a Notice of Appeal to the Supreme Court of Mississippi on February 27, 2006. On the same day, Attorney Karen Spencer filed a Notice of Appeal to the Supreme Court of Mississippi on behalf of Sundra Girard. This notice seeks an appeal of all matters in this civil action through the rendering of this court's Bench Opinion and Judgment and Judgment Corresponding with Bench Opinion and Judgment even though Sundra Girard was not a party to the proceedings after her motion to intervene was denied. Attorney Spencer's Certificate of Compliance dated February 27, 2006 indicated that $7,903.62 had been paid by Sundra Girard for the preparation of the record for appeal. A similar Certificate of Compliance is filed for Donna Chandler.

At the hearing conducted on the Motion to hold Attorney Karen H. Spencer in contempt for alleged dissemination of confidential information from this Court action to third parties, the Court ordered Attorney Cynthia Speetjens to review Attorney Spencer's file from the date range of February 2, 2006 through February 28, 2006 and make a report of communications between Attorney Spencer and her client Sundra Girard which contained confidential information from this civil action. Attorney Spencer and Attorney Speetjens applied to the Supreme Court for emergency relief to stop the operation of the order, and that relief was granted by the Supreme Court on March 10, 2006. The Supreme Court stayed all proceedings in this civil action including motions set for

hearing on March 13, 2006, and the issuance of this opinion. The Supreme Court denied the Motions filed by Donna Chandler, Sundra Girard, Karen Spencer and Cynthia Speetjens, and the stay was lifted on April 14, 2006.

SUMMARY OF THE FACTS

In the summer of 2004, Kayleigh Chandler gave her mother a note which indicated that she was having some pain in her genital area. Kayleigh was taken by her mother to a Christian Counselor in Jackson who referred her to Dr. Tammy Henderson, a general practice physician who limits her practice to pediatrics. Tammy Henderson observed some abnormalities when she did a pelvic exam on Kayleigh and advised Donna Chandler to take her to the University Medical Center for evaluation as to whether a sexual abuse situation existed. UMC'S report on their examination of Kayleigh was inconclusive on the issue of sexual abuse.

Charges for "lustful touching " were pressed against David Chandler, and the case was submitted to the Lauderdale County Grand Jury. The Grand Jury failed to indict David Chandler.

Donna Chandler moved to Texas with the children and denied David visitation. H filed a Complaint to enforce his right to visit with his children and Donna made the accusation in the Chancery Court proceeding that David had sexually abused Kayleigh. This accusation necessitated the appointment of a Guardian ad Litem for the children and made this civil action a confidential matter pursuant to Miss. Code Ann. Section 41-21-151(c)

Due to the fact that the children were in Texas with their mother the Guardian ad Litem needed Donna to bring the children to Mississippi so he could do his required investigation and make a report to the Court. The Court ordered Donna to bring the children to Mississippi for spring break 2005, and ordered supervised visitation for David with the children. The visitation exchanges were to take place at Attorney Kramer's office, no overnight

visitation was allowed, and David's contact with the children had to be in the presence of others at all times. According to the Guardian ad Litem the children were overjoyed to be with their father again and the visitation went well throughout the week. On Thursday of the spring break week, Kayleigh was a bit withdrawn, apparently because her father would not allow her to use her cell phone in the car on the way from Meridian to Quitman. This visitation ended at 5:00 pm and at midnight Attorney Kramer was called to Watkins Hospital because Kayleigh had a panic attack. Donna left town with the children after this and returned to Texas. David did not have the scheduled Friday visitation.

The Court entered another order requiring Donna to bring the children to Mississippi for supervised visitation with their father and so that the Guardian ad Litem could have access to the children to prepare his report to the Court. Rather than comply with this Court's Order, Donna sought ex parte relief in Texas and did not notify the Texas Court of the pendency of this civil action.

Due to Donna's non-compliance with the orders of this court and the Guardian ad Litem's grave concerns that the children were being manipulated, this court entered an order requiring Donna to deliver the children to Attorney Kramer's office in Quitman at 3:00 pm on Friday August 19, 2005 where the Clarke County Department of Human Services would take custody of the children. Donna failed to comply with this order.

Attorney Karen Spencer entered an appearance in this civil action on Friday, August 19, 2005 by faxing a Motion to Intervene and/or Modification and/or for Reconsideration of the Order Sua Sponte. Attorney Spencer testified that she advised Donna Chandler not to

comply with the August 16, 2005 Order because she had filed this Motion on behalf of Sundra Girard joined by Donna Chandler. A vast quantity of documentation was attached to this Motion including confidential medical records of Kayleigh Chandler. Attorney Spencer testified that her understanding of Rule 59 was that filing a Rule 59 Motion stayed the operation of the Court's order. Attorney Spencer's advice to Donna Chandler caused her to not comply with this Court's Order.

Despite the short notice, the Court allowed Attorney Spencer t o present her motion on August 22, 2005. This court's first impression of Attorney Karen Spencer was that she was a newly licensed attorney with one case to handle. She took zealous representation of a client to new dimensions. Within two days of undertaking representation of Donna chandler (the Curt did not allow intervention by Sundra Girard), Attorney Karen Spencer had caused to be issued fourteen subpoenas. Two more subpoenas were issued two days later the following week she issued a deposition subpoena to doctors at the University Medical Center and another witness subpoena. On September 8th, she caused seven more subpoenas to issue.

The Court scheduled a status conference on September 12, 2005, intended to be a meeting between the Court and the attorneys to determine whether the case would be ready for the trial scheduled in the latter part of September. Attorney Spencer filed a voluminous status report with attachments duplication those filed with the original motion including confidential medical and psychological records of Kayliegh Chandler. She also filed a response to David's motion t o quash with the same voluminous exhibits attached.

It should be noted that Attorney Spencer managed to do

all this work and file all of these documents despite the impact of Hurricane Katrina which basically shut down Lauderdale and Clarke Counties for over a week. At the same time, she was inundating Attorney Kramer and Attorney Parrish with not only the motions and attachments, but also letters, faxes, and phone calls. Attorney Kramer testified that his fee bill was three times what it normally would have been in a case like this. He felt harassed and threatened by Attorney Spencer. She sent him letters which threatened to hold him legally and morally responsible for anything adverse happening to the children. She even went by his office on September 16, 2005 and asked him to tell her the factual basis for his theory of manipulation by Donna Chandler, and when he would not tell her anything, she demanded a copy o f his Guardian ad Litem file, which demand Attorney Kramer refused. Attorney Kramer believes that Donna and her mother Sundra Girard conspired to remove the children from the jurisdiction and believes that Attorney Spencer's action are suspect. He opined that the plethora of pleadings filed by Attorney Karen Spencer were frivolous and constitute harassment. He felt he was the recipient of intimidation and harassment from Attorney Spencer. An example of the threatening language used by Attorney Spencer toward Attorney Kramer is contained in her letter to Attorney Kramer of September 26, 2005: "Donna Chandler will be forced to take all necessary steps to protect her children." In view of what transpired, this certainly was prophetic language.

Attorney Kramer believes that Attorney Spencer violated Rule 3.1 and 3.3 of the Mississippi Rules of professional conduct in making false statements of fact and law to the Court. The Judgment she prepared on December 5, 2005 did not conform to the Bench Ruling, and he believes there was a criminal conspiracy between Attorney

Spencer and Donna Chandler.

The Order of November 7th, 2005 was modified by Attorney Spencer after Attorney Kramer had signed it she crossed out "natural parents" and put "mother" and initialed the change. Attorney Kramer testified that the change was minor, but the order which was presented to the Court was not the order that he signed.

Attorney Spencer sent a letter dated October 25, 2005 to Attorney Stewart Parrish and did not copy Attorney Kramer with the letter, which has been marked as Exhibit 10.

In her September 29, 2005 Motion for Emergency/Expedited hearing on her Motion to Return Custody to Mother, Attorney Spencer alleged that Kayleigh was suicidal. This was not true but represented to the Court to be true by Attorney Spencer.

The Court took judicial notice of the Guardian ad Litem's Motion for Direction and Protective Order filed on December 1, 2005.

When Attorney Kramer attempted to correct the deficiency in the December 5, 2005 Order, Attorney Spencer insisted in correspondence that she was accurate in her recollection of the proceedings. When Attorney Spencer testified she stated that under the facts of the case at hand the definition of a Guardian ad Litem as independent, questioning everything, and taking nothing at face value in order to protect the best interest of the child did not apply. When questioned about case law which instructs guardians ad litem to be independent from all sides, answerable only to the judge, she asked to be shown the case that held that. Throughout her representation of Donna Chandler in this matter, Attorney Spencer treated Attorney Kramer as if he were

"the enemy" rather than as an attorney appointed by the Court as Guardian ad Litem to represent the children and to assist the court in dealing with the sexual abuse allegations.

When questioned about providing documents to Sundra Girard, Attorney Spencer testified that she could not remember exactly but that if there were any document that concerned Sundra Girard, she would provide it to Dr. Girard. She also stated that she did not believe Dr. Girard was a "third party" with respect to the confidentiality requirements of this litigation. While testifying, Attorney Spencer told Attorney Kramer "You are unqualified in all respects to do the Guardian ad Litem job" she proceeded to identify what she considered to be factual misstatements and conclusions in the Guardian ad Litem's reports which she stated could not be supported by evidence. Attorney Spencer described the January 26, 2006 reports as "amazingly inaccurate".

With respect to the December 5, 2006 [sic] order, Attorney Spencer testified that she had no notion that the judgment she prepared was inaccurate and was "shocked" to see legal custody remaining with the Department of Human Services in the transcript. She stated that any misstatement on her part was completely unintentional and that she was absolutely amazed when she saw what was in the transcript. Attorney Spencer stated that before the gag order was entered, there was not confidentiality attached to this civil action despite the provisions of Section 43-21-151(l)(c) but when the statute was read to her she acknowledged that the proceedings are confidential. She testified that she had numerous discussions with Donna and Dr. Girard about maintaining the confidentiality of this civil action.

Attorney Spencer asserted that the paperwork she filed

was not excessive and that to do any less she would have been committing malpractice.

Attorney Kramer sent her a letter dated 9/28/2005 requesting that she direct communication to the court through normal motion practice, but despite that she continued to send Attorney Kramer correspondence and faxes.

Attorney Spencer testified that she consulted with numerous "experts" concerning this case. She consulted with a grand jury expert about why David Chandler was not indicted. She hired Sacky Holdiness, a counselor. She hired Rebecca Whitley Watkins and identified her as a "child abuse expert". She consulted with Attorneys Mark Chinn, William Wright and Law Professor Debbie Bell. Attorney Spencer testified that all experts advised her that she was handling the case in an appropriate manner and she should not worry about it so much.

In her 10/26/05 letter t o Attorney Kramer, Attorney Spencer told Attorney Kramer not to meet with Kayleigh alone. She testified that she should have filed a motion to have Attorney Kramer removed as Guardian ad Litem because he is perhaps not qualified to protect the interest of the children. She stated that Attorney Kramer had not protected Kayleigh Chandler in any way at any time that he had failed to review information, failed to contact medical providers, and failed to make a complete review of the evidence. She said she could not fathom the reason why Attorney Kramer failed to serve as a neutral guardian ad litem whose interest is protecting children. She stated that all the facts proved that the Guardian ad Litem is more interested in protecting the interest of the father David Chandler rather than the wards.

Attorney Spencer described her statement in her letter to

Attorney Kramer of 10/26/05 that "we intend to hold you legally responsible" as a fact, not a threat. She stated under normal circumstances, the Guardian ad Litem is independent, but in this case he appeared to be working with David Chandler, against the children and she, Attorney Spencer, was doing all she could to protect the children. Attorney Spencer opined that the Clarke County Department of Human Services social worker did not do her job properly either. She even went so far as to say that she believed the Guardian ad Litem had inappropriate contact with the child. She admitted having given Dr. Girard copies of documents from this case "which concerned her as a grandparent" and did not believe giving copies of documents to Dr. Girard violated the gag order.

Attorney Karen Spencer described her own emotional involvement in this case in her testimony. She was exceedingly upset about a visit planned for Kayleigh and Michael with their mother which did not occur due to a miscommunication between DHS and Donna. DHS had notified Donna of the planned visitation by letter, but Donna had gone out of town and was unavailable to visit with the children and did not receive the letter before she left Quitman. Attorney Spencer testified that she lost sleep over her worry about the children and stayed at her office all hours to figure out what she could do to protect the children. She described herself as distraught and the situation has caused her incredible pain and anguish. She described the failed visitation as an amazingly cruel trick which caused grave emotional damage to Donna , Kayleigh, Michael and to Karen Spencer.

Attorney Spencer testified that the money paid her in connection with her representation of Donna Chandler has come from Sundra Girard. She charges $185.00 per

hour and she has spent scores o f hours on this case. She had no idea of the amount of money she had been paid, but admitted it was in excess of $50,000.00.

With regard to her failure to show up for the hearing she noticed for January 9, 2006, Attorney Spencer said she forgot, that she made a mistake and it was totally her fault and apologized to everyone. She did not believe it was appropriate for her to pay fees and costs to the other attorneys who showed up in court as a result of her notice.

Attorney Kramer testified about the difficulties and constraints he experienced in his performance of his duties as Guardian ad Litem. He needed to establish rapport with the children and could not get access to them in a timely manner. Contact with Donna Chandler and the children interfered with his ability to do his job. Kayleigh Chandler told him at least two times that he, Attorney Kramer, was not acting in her best interest. After Attorney Spencer became involved in the case, he received a constant barrage of paperwork, and communications from Attorney Spencer, Donna Chandler, and Sundra Girard which rose to a level of harassment in his opinion. Attorney Kramer stated that he had never been subjected to such false, misleading and repetitive communications in his career. No only was Attorney Kramer harassed, but the Department of Human services was harassed as well.

The barrage of paperwork forced him to send his letter to Attorney Spencer of September 28, 2005, in which he asked Attorney Spencer to engage in motion practice through the court rather than contacting him directly. Neither Attorney Kramer nor the DHS could see to other business because of having t o deal with the Chandler matter every day. The barrage of paperwork and

communication did not lessen after his letter of 9/28/2005.

The harassment continued in the form of a bar complaint filed by Sundra Girard against him which included confidential information from this sealed court file, the preliminary report of the Guardian ad Litem, Attorney Karen Spencer's Status Report and Motion for Change of Custody, the psychological evaluation performed by Dr. Jolly, copies of Tammy Henderson's report, records from the Collin County Child advocacy center, records from UMC and the Interim report of the Guardian ad Litem. The complaint was filed on December 18, 2005, after Donna Chandler had left the jurisdiction. The documents could have come only from Attorney Karen Spencer. He felt that the Bar Complaint was another effort to harass him while this case was pending and prior to the trial of the matter. This Bar Complaint galvanized him to pursue his complaint against Attorney Spencer, Donna Chandler, and Sundra Girard. In Attorney Kramer's opinion the gag order and statutory confidentiality requirement connected with this case prohibited Attorney Spencer from divulging information to Sundra Girard. In his opinion, sanctions are appropriate against Attorney Spencer.

On September 9, 2005, Attorney Karen Spencer subpoenaed the computer at Faith Church and spoke to Mrs. Chisolm, the Chancery Clerk with regard to a space in which to secure the computer. She told Walter Wells of faith Christian Church to deliver the computer to the office, then got a call from Mr. Wells reporting that Harold Brasfield said there was no hard drive on that computer.

Attorney Spencer filed the 9/12/05 motion in part due to the "computer incident". She filed the 9/30/05 Motion to

include Dr. Jolly's report. When she learned from Donna that Kayleigh wanted to commit suicide it concerned her greatly and she faxed a request for an emergency hearing to the Judge. Attorney Spencer stated that she was "out of her mind with concern for this child." Attorney Spencer drove to Quitman on September 16, 2005 to meet with Attorney Kramer to discuss the factual basis he had to make the claims of manipulation and brainwashing against Donna Chandler. She was frantic. She met with Professor Debbie Bell, Mark Chinn, William Wright, a Grand Jury expert. She did all she could do to move the case forward. And the experts she consulted did not criticize her for filing motions.

She did file a verbatim motion on 10/12/05 to the motion filed 9/27/05 because some of the exhibits were out of order and she was afraid the court would not be able to follow the motion because the exhibits were out of order. The amended motion was a housekeeping issue, and did not bring up anything new of a substantive nature.

On 10/17/05 she filed a motion to require the Gardian as Litem to file his report and to Return Custody to Donna Chandler. Attorney Spencer testified that before filing motions she read the court file, read documents provided to her, researched applicable law, considered alternatives, consulted with her client, experts Rebecca Watkins, rules, laws, constitutional laws, procedural rules, case law, and applied the law to the facts. She consulted with Bilbo Mitchell, the District Attorney, and a criminal law expert. She considered every single fact contained in the court file and everything her client told her. She spoke with Dan Powers, the Executive Director of the Collin County child Advocacy Center, and Rene Matthews, one of the counselors there.

Attorney Spencer filed her motion late Friday the 19th of

August 2005, and missed Attorney Parrish, so she called him at his home on Saturday, August 20th at around 12:30 or 1:00 to advise him that she would be representing Mrs. Chandler, had spoken to the Court Administrator Sue Franklin and had her emergency motion set for Monday morning. Attorney Spencer reported that Attorney Parish told her words t o the effect that "we are coming after Mrs. Chandler and if you represent her we'll be coming after you."

On the fifth day of the motion hearings, Attorney Spencer continued her testimony. She stated that she consulted with even more lawyers than she had previously testified about, including Attorney Robert McDuff on the constitutional issues. The issue of the dental treatment of the children very much frightened her and she consulted Attorney Wayne Drinkwater, who is representing three hundred plaintiffs against the DHS in Federal Court. Attorney Spencer learned that Kayleigh would be seeing Dr. Traxler in Quitman for the extraction of a baby tooth and she wrote a letter to Dr. Traxler, which is in evidence marked as Exhibit 31. Because of her concern that DHS might not be protecting the physical interest of Kayleigh and Michael, she considered associating another lawyer.

Attorney Spencer discussed the change that she made to the order prepared by Attorney Kramer after hearings held on November 7, 2005. She admitted making a change in paragraph three, changing " natural parents" to "mother" and initialed the change on the face of the order. Attorney Spencer denied that she made the change without notice to the other attorneys. She went on to state that Attorney Parrish intends to ruin her and asserted that he deliberately misled the court saying that she did something wrong.

Attorney Spencer stated that she attempted to resolve issues without court intervention and drafted a temporary order after the hearings of September 20, 2005. Exhibit 33 is her letter to Attorney Kramer proposing the settlement. She did not intend to exclude Attorney Parrish from the process she was offering the terms first to Attorney Kramer and then intended to send the offer to Attorney Parrish.

Attorney Spencer went on to say that she was driven by one motive: to protect her client and her interests. She stated that the conduct of Attorney Parrish affected her decision to file the motions which she filed. He refused to talk to her or work with her and prevented her from moving smoothly through the court. It took more time because no issues were agreed to, and she was forced to do everything the long way and the hard way.

Attorney Spencer cited the case of Lewis v. Butler, 974 so. 2d 1015 [sic] to support her contention that Donna Chandler was justified in not complying with the Court's order requiring visitation. The court reviewed this case, and it is not on point to the situation which existed in this civil action. The Lewis case involved non-compliance with a visitation order due to the mother's suspicions that the father had abused the children. The court found that the mother should not be held in contempt for violation of the visitation order because of her genuine concern for her children's safety. In this case visitation had been ordered after the allegations of sexual abuse had been made, and the Lewis case does not justify non – compliance with this Court's orders in the context in which they were entered.

Attorney Spencer stated that she believed she knew exactly what she was doing when she filed her motions and prepared for trial. She opined that she was competent

to represent Mrs. Chandler and conducted the independent investigation required in her representation of Donna Chandler. A lot of the information she relied on came from Donna, including the allegation that Kayleigh had made a "suicide threat" and that the Guardian ad Litem had set up a meeting with Kayleigh, himself and David Chandler for David to make an apology to Kayleigh.

When questioned about her alleged abuse of Rule 45 Subpoenas Duces Tecum, she stated that the court "amazingly" ordered her not to issue subpoenas.

Attorney Spencer testified that her first courtroom appearance was on August 22, 2005, and that at the time Attorney Joe Kieronski was Donna's attorney of record.

Attorney Spencer filed her Second Amended Motion to Return Children to Mother on 10/12/05. It was identical to the motion filed on 9/27/05 with the exception that the exhibits were in proper order. She stated that she could not recall whether she sent a cover letter explaining that it was the same motion, but opined that an attorney could easily determine that it was the same motion.

When questioned about her Motion to Require the Guardian ad Litem To File Report Returning Custody to Donna Chandler, Attorney Spencer stated that it was proper to ask the Court to order the Guardian ad Litem to make a specific finding.

When questioned about the Bar Complaint filed against Attorney Kramer by Sundra Girard, she stated that she did not know that Dr. Girard was going to file that complaint.

On 12/13/05, in response to a subpoena for Donna Chandler's computer, Attorney Spencer filed a statement

that "Donna does not own a computer; subpoena is too broad." (Exhibit 35.) In court on September 20, 2005, Attorney Spencer asked her client Donna Chandler about her computer and stated that it was fine for anyone to look at Donna's computer.

When questioned by Attorney Kramer, Attorney Spencer admitted that she wanted the District Attorney to indict Mr. Chandler because of her belief that he has sexually assaulted Kayleigh Chandler and finds it reprehensible that a man would harm his own child by raping her. She has spoken to District Attorney Bilbo Mitchell and tried to reach Assistant District Attorney Lisa Howell.

Attorney Spencer testified that she had filed six motions, plus two "housekeeping" motions. These filings did not include other notices , subpoenas, documents, letters, and faxes. She admitted sending numerous letters and numerous copies of court filings by fax. Despite receiving a letter from Attorney Kramer requesting that she stop, she did not stop.

Attorney Spencer stated that she did not consider her 11/5/05 letter to Dr. Traxler to be an interference with DHS custody of the minor children.

Exhibit 32 is a copy of an e-mail Attorney Spencer sent to Donna Chandler, with a copy to Sundra Girard with attachments which are confidential and covered by the Court's gag order. Attorney Spencer stated that Sundra Girard is not a third party. She admitted sending confidential documents to Sundra Girard and stated that she did not believe that her actions were in contravention of the Court's orders.

Attorney Spencer testified on redirect concerning the personal cost that she has been put to because of the motions for sanctions against her. She charges her time at

$185.00 per hour and had to appear in court February 3, 6, 7, 8, and 9 defending the motions. She also had to hire Attorney Speetjens who is charging her $200.00 per hour. She stated that Attorney Kramer and Attorney Parrish were acting in their own personal interest, not in the interest of the children, not in the interest of David Chandler, and that it was costing tens of thousands of dollars, costing her incredible sums, causing her incredible pain and anguish, that she had not slept in three to four days, and that she had suffered "amazingly." She went on to say that she suffered from a headache for days, and she was justifiably concerned about the attack on her integrity and her professional ability. She added that she will need medical attention.

Attorney Parrish testified about the damages suffered by his client due to the alleged misconduct on Attorney Spencer's and her client's part. Prior to the commencement of the hearing on February 3, 2006, Attorney Parrish's legal fees charged to Mr. Chandler at $150.00 per hour were in the sum of $11,861.36. He spent an additional sixty-eight hours through the fifth day of the hearings, and testified that the majority of the expense was incurred after July 2005 when Attorney Spencer entered the case.

DISCUSSION OF THE APPLICABLE LAW

The Litigation Accountability Act is found in the Mississippi Code at Section 11- 55-1, et seq. The definitions are set out in Section 11-55-3. Subsection 5(a) provides as follows: "Without substantial justification , when used with reference to any action, claim, defense or appeal, including without limitation any motion, means that it is frivolous, groundless in fact or law, or vexatious, as determined by the court ."

The Litigation Accountability Act allows for the award of attorney fees and costs against an attorney or a party in Section 11-55-5 as follows: (1). . . the court shall award, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorney's fees and costs against any party or attorney if the court , upon the motion of any party or on its own motion, finds that an attorney or party brought an action, or asserted any claim or defense, that is without substantial justification, or that the action , or any claim or defense, that is without substantial justification, or that the action , or any claim or defense asserted, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceedings by other improper conduct including, but not limited to, abuse of discovery procedures available under the Mississippi Rules of Civil Procedure." Subsection (3) provides that "when a court determines reasonable attorney's fees or costs should be assessed, it shall assess the payment against the offending attorneys or parties, or both, and in its discretion may allocate the payment among them, as it determines most just, and may assess the full amount or any portion to any offending attorney or party." Subsection (4) requires that before the assessment of fees should be ordered unless the court finds that the party clearly knew or reasonably should have known that such party's action, claim or defense or any part of it was without substantial justification. Section 11-55-7 sets out factors to be considered by the court in assessing the amount of attorney's fees and costs.

Throughout the pendency of this civil action, Attorney Spencer has faxed voluminous pleadings and other documents in advance of filing the originals, and the court file swelled to dramatic proportions. Among the documents filed by Attorney Spencer are the following:

1. Motion to Intervene and/or Modification and/or Modification and/or for Reconsideration of Order Sua Sponte, filed by fax 8/19/05 and the original filed 8/22/05. Confidential records of the minor child were attached to the original filing.

2. Motion for Emergency/Expedited Hearing on Motion to Intervene and/or Modification and/or for Modification and/or Clarification of Order Sua Sponte, sent by fax on Saturday, August 20, 2005, with the original filed on August 22, 2005.

3. Faxed letter to Attorney Parrish on Saturday, September 3, 2005, with copies faxed to Attorney Kramer, the Chancery Clerk, and Judge Springer. Confidential records of the minor child were attached .

4. Answer to Amended Petition for Modification, Motion t o Dismiss and Amended Counterclaim. This pleading was not faxed first.

5. Status Report and Motion for Change in Custody was filed first by fax on 9/9/05 and then the original filed September 12, 2005. Confidential records of the minor child were attached to the original filing (not included in the fax.)

6. Response in Support of Subpoena Duces Tecum was filed on September 12, 2005. Confidentiil records of the minor chi l d were attached.

7. Second Motion to Return Custody to Mother, filed September 27, 2005. Confidential records of the minor child were attached.

8. Motion for Emergency/Expedited Hearing on Motion t o Return Custody to Mother, filed September 30, 2005.

9. Amended (Second) Motion to Return Custody to

Mother was filed October 12, 2005. Confidential records of the minor child were attached.

10. Motion for Order Scheduling the Trial of All Pending Issues was filed first by fax on October 18, 2005, and then by mail on October 19, 2005.

11. Motion to Require Guardian Ad Litem to File Report Returning Custody to Donna M. Chandler was filed October 19, 2005.

12. Motion for Contempt, filed by fax on November 7, 2005 and by mail November 8, 2005.

13. Motion to Lift Gag Order, filed December 1, 2005.

14. Notice to take deposition of the Guardian ad Litem was filed December 1, 2005. Attorney Spencer signed the notice as Attorney for "Donna Chandler and Sundra Girard."

15. Motion to Correct Factual Errors or Omissions in Record filed January 17, 2006.

16. Motion to Withdraw as Attorney of Record was filed January 17, 2006.

17. Response to Motion for Sanctions and Counter Motion for Sanctions filed on February 2, 2006.

18. Response to Motion to Strike Defenses and Counter Complaint filed February 2, 2006.

19. Also on February 2, 2006, Counter Motion to Disqualify and Remove Guardian ad Litem.

20. Motion to Lift Gag Order for Specific Purpose was filed February 13, 2006.

21. Motion to Lift Gag Order filed February 13, 2006.

22. On February 22, 2006, Response to Motion to Find

Attorney Karen Spencer in Contempt.

The filings made by Attorney Spencer were certainly voluminous. She attached the confidential records of the minor child Kayleigh Chandler six times. It was not necessary for her to attach these records on any occasion, and it appears that she attached the records to the filings, including a letter copied to Judge Springer, with the intention of having the Court review documents which were not admitted into evidence in advance of the trial or any pre-trial hearings.

Rule 11 has been invoked in the motions pending before the Court. In pertinent part, the rule provides as follows:

RULE 11. SIGNING OF PLEADINGS AND MOTIONS

Signature Required. . . .The signature of an attorney constitutes a certificate that the attorney has read the pleading or motion; that to the best of the attorney's knowledge, information and belief there is good ground to support it; and that it is not interposed for

delay. . . .

Sanctions. . . .For wilful [sic] violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted. If any party files a motion or pleading which, in the opinion of the court, is frivolous or is filed for the purpose of harassment or delay, the court may order such a party, or his attorney, or both, to pay to the opposing party or parties the reasonable expenses incurred by such other parties and by their attorneys, including reasonable attorneys' fees.

By signing these documents and filing them in the court file, Attorney Spencer vouched for the content of the documents.

The first motion filed by Attorney Spencer changed the tone of this case. It was filed in a flurry on a Friday afternoon, and Attorney Spencer was accommodated by the Court, the Guardian ad Litem, Edward N. Kramer, the attorney for Donna Chandler at the time, Joseph A. Kieronski, and by the attorney for David Chandler, Attorney Stewart Parrish, when all appeared at the hearing hastily set for that Monday morning.

In her testimony, Attorney Spencer stated under oath that she advised Donna Chandler not to comply with the Court's Order Sua Sponte entered on August 16, 2005. In the body of the Motion, Attorney Spencer set out that "the Motion is filed to temporarily suspend the operation of the August Order." Attorney Spencer stated that pursuant to MRCP Rule 59, her motion stayed the effectiveness of the Court's Order of August 16, 2005.

A review of Rule 59 reveals that there is no such stay effected by such a Motion. Her advice to her client Donna Chandler was erroneous, and that advice caused Donna Chandler to disregard the Court's order which required her to deliver the minor children to Attorney Kramer's office at 3:00 p.m. on Friday, August 19, 2005. Attorney Kramer and DHS worker Brunette Jones were there to receive the children and had no notice that Donna Chandler would not be complying with the order to deliver the children at the specified time.

The record is clear that Donna Chandler was uncooperative with the Court in making the children available to the Guardian ad Litem prior to Attorney Spencer's entrance into the case. There were problems with the 2005 spring break visitation which in the Court's opinion were caused by Donna Chandler and Sundra Girard, not by any adverse action on the part of David Chandler.

The Court ordered supervised visitation for David Chandler in July 2005 and required Donna Chandler to bring the children to Mississippi from Texas to facilitate the visitation and to afford the Guardian ad Litem an opportunity to meet with the minor children Kayleigh and Michael. Instead of complying with this order, Donna Chandler filed the Texas ex parte proceeding.

The Guardian ad Litem could not properly serve this court and fulfill his duties under those circumstances, and the Court found that the only recourse was to enter the Sua Sponte Order requiring Donna Chandler to surrender the children to the custody of the Clarke County Department of Human Services. Donna Chandler made the allegations which required the appointment of a Guardian ad Litem and the case could not proceed at all without the report of the Guardian which could not be had without his having access to the children.

Attorney Spencer filed requests for the children to be returned to the custody of her client through five different motions filed from August 19, 2005 through October 19, 2005.

Hurricane Katrina caused problems in having the childen psychologically evaluated and also caused damage to the Guardian ad Litem's office in Quitman, and inevitably a delay was experienced in the completion of the required report. Attorney Spencer and her client did not stop in their full court press to regain custody of the minor children. Attorney Spencer sent out an enormous quantity of correspondence which the Guardian ad Litem labeled a "barrage." These letters came by fax and by mail. There were telephone calls. The Guardian ad Litem testified that he felt harassed, as did the Clarke County DHS Social Worker, Brunette Jones. Attorney Kramer also was threatened, and Attorney Spencer

testified that she considered filing lawsuits against Attorney Kramer in circuit court and asserted that the Guardian ad Litem intentionally inflicted emotional distress upon the minor children, their mother, and on Attorney Spencer herself.

After the initial appearance by Attorney Spencer on August 22, 2005, and the Court's denial of her motion to reconsider the placement of the children with the DHS, Attorney Spencer filed a renewed request to return the children to Donna Chandler's custody in her "Status Report and Motion for Change in Custody" filed September 12, 2005. The case had been set for trial on September 20, but due to the hurricane and related problems, the Guardian ad Litem was not prepared to go forward. Attorney Spencer attempted to have her Motion for Change in Custody heard on September 20, and made a long proffer of the evidence which she proposed t o present. The proffer showed that to go into the Motion would be tantamount to having the trial on the merits, and the trial on the merits could not be had until the Guardian ad Litem was prepared to proceed.

Despite this ruling about her motion, and despite the necessity that the Guardian ad Litem be prepared to proceed before the Court could consider the motion, Attorney Spencer filed a second Motion to Return Custody to the Mother a week later on September 27, 2005, and requested that the Court expedite the hearing. She filed an Amended (Second) Motion to Return Custody to Mother on October 12, 2005. Although she testified this was a "housekeeping" motion because the exhibits were out of order, she failed to inform the other attorneys of this. The other attorneys therefore had to treat the motion as the filing of new matter and this required additional time and effort on their part.

The exhibits should not have been attached to these motions in the first place. The same exhibits (with the exception of the transcript of the proceedings on September 20, 2005) were already in the court file in the Motion to Intervene filed August 19, 2005, the letter in the court file dated September 3, 2005, the Status Report and Motion for Change in Custody filed September 12, 2005, and the Response in Support of Subpoena Duces Tecum filed September 12, 2005. With the second Motion to Return Custody to Mother filed September 27, 2005 and the Amended (Second) Motion to Return Custody to Mother filed October 12, 2005, all of the same exhibits were filed again and the September 20 transcript was filed with each motion. This is a tremendous amount of material and should have been produced outside the court file in the context of discovery, and should not have been attached to the motions again and again.

Exhibit 11 is a letter dated September 26, 2005 from Attorney Spencer to Attorney Parrish, copied by fax to Attorney Kramer. This letter sets out Attorney Spencer's view of the work of the Guardian ad Litem on this case. She states that there is "no doubt that David Chandler sexually assaulted Kayleigh Chandler and requests that David dismiss his Petition for Modification "immediately". She closes the letter by stating "If David Chandler does not dismiss his Petition, Donna Chandler will be forced to take all necessary steps to protect her children. This statement is prophetic, considering Donna's leaving the jurisdiction with the children as soon as she received their physical custody.

Exhibit 15 is Attorney Kramer's polite request in a letter dated September 28, 2005 to Attorney Spencer that she stop inundating him with the "constant blizzard of

paperwork" which "serves no purpose other than to make a record of your objections, while disrupting my investigation." He informed Attorney Spencer that her frequent demands on him only detracted from his effectiveness in handling the case. This letter was not effective to stop Attorney Spencer's application of pressure to the DHS and the Guardian ad Litem, and her filings and faxing and correspondence continued unabated.

Attorney Spencer's treatment of the Guardian ad Litem did impede his progress. The almost daily intrusion by Attorney Spencer into Attorney Kramer's workday and the workday of the DHS created an extremely hostile and pressure- filled environment for the DHS and for Attorney Kramer.

The Guardian ad Litem plays an essential role in a case such as this where there has been an allegation of sexual abuse. There were two possible outcomes that had to be fully explored: (1) The father had sexually abused the child or (2) the mother had manipulated the child to allege that the father had sexually abused her. The Guardian must be allowed time to perform his duties, and should not be forced to operate in an environment such as what was created by Attorney Spencer.

The importance of the Guardian ad Litem is discussed by our Supreme Court in the case of Copiah County Department of Human Services v. Linda D., 658 So. 2d 1378, a t 1383, as follows: " . . . the guardian ad litem 'investigates, makes recommendations to a court, or enters reports,' and holds paramount the child's best interest . [citing Short v. Short, 730 F. Supp. 1037, 1038 (D. Colo. 1990) The court in Copiah goes on to quote Shainwald v. Shainwald, 302 S.C. 453, 458, 395 S.E.2d 441, 444 (C t . App. 1990) as follows: "A guardian ad

litem is a representative of the court appointed to assist it in properly protecting the interests of an incompetent person. Children are best served by the presence of a vigorous advocate free to investigate, consult with them at length, marshal evidence, and to subpoena and cross-examine witnesses. Judges should also be mindful of the fact that a guardian ad litem is not in the true sense an adversary party and the court has a duty to insure that guardians ad litem perform their duties properly and in the best interest of their wards. The trial judge's duty to assure the child's best interests are protected requires as a minimum that (1) he select a competent person to serve as guardian ad litem; (2) he select a person wit h no adverse interest to the minor; and (3) the person so selected is adequately instructed on the proper performance of his duties.

RBS vs. TMS, 765 So. 2d 616 (Miss. Ct. App. 2000) is another case which discusses the importance of the Guardian ad Litem in a case where sexual abuse is alleged. At 620, the Court stated: "A guardian ad litem for a minor child is an advocate for the child alone, presumably uninfluenced by the litigating position of either parent since, in some cases, a parent may take a position that, when viewed objectively, actually appears not to be in the child's best interest. [citing cases] 'A guardian ad litem should be . . . ' . . .unbiased and independent ... to insure protection for the child's best interests.' That is an important role, but that role is fulfilled when the guardian vigorously advances a position that the guardian believes to be in the child's best interest. However there is not, nor ought there to be, any presumption of correctness attached to the litigating position taken by a guardian ad litem. The view of the guardian and the reasoning behind that view are nothing more than additional information to aid the chancellor in

making the decision on the merits of the matter in dispute a matter that ultimately lies with the chancellor and which cannot be delegated by the appointment of a guardian ad litem." [citing authority.]

The proper forum to question the Guardian's recommendations to the court would be in the context of the trial where all of the evidence can be examined. Attorney Spencer's actions created an environment in which it was extraordinarily difficult for the Guardian ad Litem to fulfill his role in the way intended by the case law.

From the beginning of her representation of Donna Chandler in this civil action, Attorney Spencer disagreed with the reports of the guardian. She instructed him not to meet with Kayleigh Chandler alone because he was a man and a man had assaulted Kayleigh. She threatened to hold him personally liable for any adverse effect that might be had on the children. She demanded to see his file. She subpoenaed him for a deposition. She championed herself as the one with the role to protect the children but she did not come into that role in a fair and impartial manner as had Attorney Kramer. Attorney Spencer was completely and utterly convinced that David Chandler had sexually abused his child and if the Guardian ad Li tem contemplated any other possibility, she asserted that he was not doing his job.

Exhibit 10 is a letter from Attorney Spencer to Attorney Parrish with no copy sent to Attorney Kramer, dated October 25, 2005, informing Attorney Parrish that Attorney Kramer was arranging for "an apology" from David Chandler to Kayleigh Chandler. Attorney Kramer and social worker Jones testified that no such meeting was contemplated nor arranged. The tone of Attorney Spencer's posture in this case is displayed in this letter

when she states "Thus, Attorney Kramer believes that David Chandler sexually assaulted Kayleigh. Considering this fact and the irrefutable documentary evidence which has been attached to recent motions filed in this matter. . . . "Attorney Spencer requests that Attorney Parrish dismiss his motions against her client based on this statement, and goes on to ask him to join in her motions "so that pressure can be brought to bear on Attorney Kramer to return custody of Kayleigh and Michael to their mother."

Attorney Spencer in her representation of Donna Chandler never contemplated that there was any other possibility in the case than that her client was absolutely correct on all of the allegations made against David Chandler. She appeared at all times to be personally invested in the outcome of this case, and could envision no outcome other than this court's finding that David Chandler had sexually assaulted his daughter and that he should be indicted by the Grand Jury and convicted for his crimes. Every time she appeared in court, Attorney Spencer went through a litany of what she deemed to be the "irrefutable evidence" against David Chandler.

Attorney Spencer filed a Motion for Sanctions against Attorney Parrish and the Court found that although Attorney Parrish had been rude to Attorney Spencer, his conduct did not rise to the level that sanctions were appropriate. The Court did state that it would consider whether or not Attorney Parrish's conduct should mitigate any damages the Court might find appropriate if sanctions were levied against Attorney Spencer. Considering the immovable position of Attorney Spencer with regard to her firm beliefs expressed vehemently again and again, the number of motions she filed, the quantity and quality of the faxes and letters she sent, it is

not surprising that Attorney Parrish reacted to her the way he did. Therefore, Attorney Parrish's conduct should not mitigate in any way the damages this Court should award.

This Court has been asked to sanction Attorney Spencer pursuant t o the Litigation Accountability Act, Mississippi Code Ann. Section 11-55-1 et seq and pursuant to Rule 11, Mississippi Rules of Civil Procedure. A review of the facts and procedural history of this case make it clear that Attorney Spencer is liable for sanctions pursuant to the Act and the Rule. Her conduct toward the Guardian ad Litem was harassing and threatening and vexatious and interfered with his ability t o serve the Court in the capacity to which he was appointed. The Guardian's services were required by law due to the allegations made by her client, and Attorney Spencer's actions impeded his progress.

Attorney Spencer's first attempt to have custody restored to Donna Chandler was her filing of the Motion to Intervene and/or Modification and/or for Reconsideration of the Order Sua Sponte filed August 22, 2005. On September 20, Attorney Spencer again brought up the issue through her status Report and Motion for Change of Custody. The Court ruled at that time that to conduct a hearing on that motion would be tantamount to having the trial on the merits and the trial on the merits could not be had until the Guardian ad Litem was prepared, and he was not prepared. Despite this clear ruling, Attorney Spencer filed similar motions to her previous motions on September 27, 2005, and on October 12, 2005. Although she stated that the October 12, 2005 filing was "housekeeping" due to the mis-ordering of exhibits, she did not inform the attorneys involved in the case that this filing was a replacement for the September 27 filing, and

they justifiably spent time reviewing the new motion.

Considering the clear ruling from the Court that the motion to return custody to mother could not be heard until the Guardian ad Litem was prepared to proceed, it was unnecessary for the two subsequent motions to be filed.

Considered in the context of the constant faxing and mailing of pleadings and letters, the two subsequent motions on the same subject matter of the first motion should be considered harassment. It should also be noted the number of times Kayleigh's confidential medical records were attached to filings made by Attorney Spencer. As the Court stated earlier, it would have been appropriate to share the information with the other attorneys without filing it in the court file, and it appears that attaching these records to the pleadings was an attempt to have the court review information that had not been admitted into evidence.

The confidential records were attached unnecessarily, and they were filed in the court file six times. An attorney can be sanctioned pursuant to Rule 11 if "scandalous or indecent matter" is inserted into a pleading or motion. Attorney Spencer not only was filing the confidential records in the court file, but at the same time she was attempting to lift the gag order from the proceedings and she did opine that the confidentiality provisions of Section 43-21-151(1)(c) should not apply to this Chancery Court action.

Confidential medical, psychological and counseling records of a minor child who is alleged to be sexually abused certainly contain information which is scandalous, especially when it is considered that the father has been accused of abuse on the minor child. The

documents should have been produced in discovery and should have been presented in court, following evidentiary rules, so that the court could properly review them in the conduct of the trial, if that information was introduced into evidence. Filing the documents the first time may have been arguably appropriate, but they were filed six times. Sanctions for this conduct on the part of Attorney Spencer should be considered.

Sanctions against attorneys have been upheld by the Supreme Court of Mississippi. Tricon Metals & Services, Inc. v. Topp, 537 So. 2d 1331 (Miss. 1989) in which the Court upheld Rule 11 sanctions. At page 1334, the Court stated "There can be no doubt of the authority of our trial courts to assess reasonable attorneys fees when in the opinion of the court a motion or pleading is "frivolous". At page 1335, in discussing the language of Rule 11, the Court states: "in each instance the rule's language identifies a triggering event as requisite to the authority to sanction. in each instance that triggering event is litigation conduct by a party and/or his attorney. ... Our courts have authority to act sua sponte under Rule 11 and ought to exercise that authority against the backdrop of their inherent authority to impose sanctions upon those who abuse the judicial process. [citing cases] ."

The Tricon court goes on to discuss the nature of a frivolous pleading, at page 1335: "More substantively, a pleading or motion is frivolous within the meaning of Rule 11 only when, objectively speaking, the pleader or movant has no hope of success. Frivolous filings impose substantial and unnecessary costs upon both litigants and the courts, and ultimately upon the public. Rule 11 must be read and interpreted in light of the purpose implicit in it: one of general deterrence of frivolous filings. Common sense informs us that we may not eliminate the

frivolous filing nor its costs. The goal of Rule 11 enforcement is to holding the social cost of frivolous flings [sic] to an optimally efficient level."

Certainly Attorney Spencer's Motions t o Return Custody to Mother were filed with hope of success. The issue before the Court boiled down to two possibilities: either the father abused the child or the mother manipulated the child to accuse the father of the abuse. The children were taken from the custody of their mother because she refused to cooperate with the Court so that the Guardian ad Litem could have access to the children and could fulfill his duties to the court. Also, the Guardian feared that the child was being manipulated by her mother, and the children needed to be in a neutral environment to be away from the possibility of manipulation so that the Guardian ad Litem could conduct his investigation and report his findings to the court on the two possible scenarios.

After the court informed Attorney Spencer on September 20th that to hear her motion would be akin to having a trial on the merits and that the Guardian needed time to complete his report, Attorney Spencer should have refrained from filing additional similar motions, along with all of her other filings, faxes, and letters. So although her motions were filed with hope of success, they impeded the progress of the Guardian ad Litem's investigation and caused all concerned to devote more time to the litigation, and in the case of Attorney Kramer and Attorney Parrish, incur more attorneys' fees which were not being paid. In effect, the motions constituted harassment and caused Attorney Kramer and Attorney Parrish to spend additional time on the case which should not have been necessary. The motions caused vexation and delay and constituted harassment. In addition to the

three motions with the subject matter of restoring to Donna Chandler the custody of her children Attorney Spencer also filed a Motion to Require Guardian ad Litem to File Report Returning custody to Donna M. Chandler. There was already enormous pressure on the Guardian to conclude his report, and this motion was unnecessary and in the context of all of the other filings, faxings and letters, this motion constituted additional harassment and caused vexation and the incurring of additional attorney fees. The Motion also requested that the court order Attorney Kramer to issue a report favorable to Donna Chandler. It would have been inappropriate for the court to grant such relief , and the motion itself was totally unnecessary. Attorney Spencer filed a Motion to Lift Gag Order on December 1, 2005, a Motion to Lift Gag Order for Specific Purpose on February 13, 2006, and a Motion to Lift Gag Order on February 13, 2006. The court did instruct Attorney Spencer that it would consider specific requests with regard to the gag order, so the Motion to Lift Gag Order for Specific Purpose could not be considered frivolous. The other two Motions could not have hope of success due to the provisions of law, specifically Miss. Code Ann. 43-21-151(1) (c). Attorney Spencer was insistent that the gag order be lifted so that she could insure that David Chandler was prosecuted for the crime of sexual assault of his child. Despite the fact that she was filing these motions to lift the gag order, she was not complying with the gag order by her own admission since she was giving confidential information from this case routinely to her third party client, Sundra Girard. The two motions to lift the gag order generally were frivolous because the law prohibits information t o be disseminated. Attorney Spencer 's disagreement with the provisions of law should not have given her hope of

success on these motions. Additionally, the motions required the attention of the other attorneys in the case and caused them to be harassed and vexed.

Attorney Spencer's Motion to Disqualify and Remove Guardian ad Litem filed February 2, 2006, constituted additional harassment of the Guardian ad Litem by her. His findings were contrary to what she believed, but that did not mean that he was not doing the job required of him by law. It did take time for him to properly conduct his investigation, but the issues were complex and the volume of paperwork thrust upon him by Attorney Spencer delayed his progress in completing his work. This motion, in addition to being vexatious and harassing, was filed on the first day scheduled for the trial, and after Attorney Spencer's client had absconded from the jurisdiction with the minor children there could be no hope of success on this motion, and it was without a doubt frivolous.

The Litigation Accountability Act sets out factors for the Court to consider in awarding costs and attorney's fees in Section 11-55-7. The review of the conduct of this litigation by this Court makes it clear that Attorney Spencer should be held liable for sanctions pursuant to MRCP Rule 11 and the Litigation Accountability Act. In considering the factors to be considered, this Court makes the following findings:

Attorney Spencer made considerable effort to determine the validity of her client's claims, but she failed to consider that there might be another version of the truth. Her zealous representation of her client's interests was taken to such an extent that she caused others involved in the litigation to be harassed and threatened.

Attorney Spencer did not attempt to reduce the number

of claims; she asserted the same claims over and over to the point of harassing the other attorneys involved in the litigation.

Facts were readily available. Attorney Spencer's filings, faxes, and letters impeded the development of the facts by the Guardian ad Litem and contributed to delays and difficulties in the litigation.

Attorney Spencer certainly had a valid purpose to pursue in her representation of Donna Chandler, but the way that she presented her client's claims constituted harassment.

There were contested issues of fact which would have been determinative of Attorney Spencer's client's claims, but her conduct of the litigation did not contemplate even the existence of such a possibility.

Attorney Spencer did not prevail in this case. The Court did not allow her to withdraw from her representation of Donna Chandler after Mrs. Chandler absconded from this Court's jurisdiction. Attorney Spencer was present through the trial on the merits, but did not present evidence in that trial except by proffer.

Attorney Spencer asserted that the confidentiality of this civil action was unlawful and violative of her client's constitutional rights. She asserted that Section 43-21-151(1)(c) had no applicability to this Chancery Court action, although it clearly does. Attorney Spencer was not trying to establish a new theory of law: she was not complying with the clear provisions of the law and she was violating this Court's specific orders that confidentiality be maintained.

Attorney Spencer did draft an agreed judgement [sic] in an attempt to restore custody of the children to her client prior to the recommendations of the Guardian ad Litem

in that regard, but her conduct toward the other attorneys and her unflinching stance on her client's version of the facts made any such attempt absolutely futile.

Attorney Spencer attempted to have the grandmother of the minor children, Sundra Girard, joined as a party. The law is clear that grandparents do not have rights pertaining to their grandchildren absent proof of an established relationship with the grandchildren beneficial to the children, and that the established relationship is interrupted due to some impediment such as the death of the grandparent's child through whom that grandparent had established that relationship. Considering that there was absolutely no impediment to Sundra Girard's relationship with the minor children due to her close relationship with her daughter Donna Chandler, it should have been clear to Attorney Spencer that Sundra Girard did not have a right to intervene in the litigation between her daughter and former son-in-law with regard to the allegations made by Donna against David. Also, it is clear from the evidence before the Court that Sundra Girard was and is Donna's right hand in the effort to permanently deprive David Chandler of his parental rights to Kayleigh and Michael. Sundra Girard was not a proper party to this litigation, was denied the right to intervene, and yet Attorney Spencer continued to treat Dr. Girard as a party litigant in this case and in the process violated 43-21-151(I)(c) and this Court's orders requiring confidentiality.

Attorney Spencer did not make any effort to reduce the involvement of the non-party, Sundra Girard.

Attorney Spencer harassed the other attorneys in this case with her filings, as discussed supra.

Attorney Spencer is guilty of filing frivolous motions.

She is guilty of harassing the other attorneys in the case with her faxes, filings, and letters. She is guilty of including scandalous material again and again as attachments to her pleadings. She is guilty of unnecessarily faxing voluminous documents in advance of mailing them. Her conduct was extraordinarily vexatious, and it impeded the work of the guardian ad Litem. She acted as if the Guardian ad Litem was an adverse party rather than an impartial fact-finder appointed by the Court to represent the interest of the children, and even subpoenaed him for a deposition. Her threats to the Guardian ad Litem and the attorney for David Chandler were inappropriate, and sadly prophetic of what occurred in this case: Donna Chandler helped herself to the justice she sought by absconding with the children as soon as she was restored their physical custody. The very first action on the part of Attorney Spencer in her representation of Donna Chandler was to instruct her not to comply with a court order. Attorney Spencer altered a judgment after being approved by other attorneys and before it was presented to the court. Attorney Spencer drafted the December 5, 2006 judgment which omitted legal custody in the DHS and restored physical custody to Donna Chandler. Attorney Spencer met with Donna Chandler for a considerable period of time prior to her leaving the jurisdiction with the children. Although there is no direct proof that Attorney Spencer played a role in a conspiracy with Donna Chandler and Sundra Girard, and although Attorney Spencer denies any complicity, the circumstances are suspicious.

In view of all of the foregoing discussion, it is clear that this Court has no alternative but to sanction Attorney Spencer for her conduct in this litigation. She has been paid in excess of $50,000.00 by Sundra Girard. The

Guardian ad Litem has had very little compensation, and it is likely that Attorney Parrish has had very little compensation, especially considering the fact that David Chandler was fired from his job after information from this litigation was disseminated to his employer.

As a penalty for her conduct in this litigation, Attorney Spencer shall pay to Attorney Edward N. "Nick" Kramer for his services as Guardian ad Litem in this case the sum of $25,000.00. As a further penalty for her conduct in this litigation, Attorney Spencer shall pay to Attorney Stewart Parrish the sum of $25,000.00 for the attorney fees incurred by his client in this litigation.

A judgment should be and is hereby entered against Attorney Karen H. Spencer in favor of Attorney Edward N. "Nick" Kramer in the sum of $25,000.00. Interest at the rate of five per cent per annum shall accrue on this judgment from this date, and the process and execution of this Court shall issue for the enforcement and collection of this judgment. A judgment should be and is hereby entered against Attorney Karen H. Spencer in favor of Attorney Stewart Parrish in the sum o f $25,000.00. Interest at the rate of five percent per annum shall accrue on this judgment, and the process and execution of this Court shall issue for the enforcement and collection of this judgment.

Attorneys Kramer and Parrish have gone without compensation while Attorney Spencer has been compensated handsomely by Sundra Girard. In view of all of the activity in this civil action on the appellate level, it is obvious that Sundra Girard is continuing to fund this litigation. Donna Chandler is no longer here to drive the litigation, and it is apparent that Sundra Girard has been the driving force throughout, as she is the one who has been paying the bills. The fees of Attorneys

Kramer and Parrish are continuing to accrue, uncompensated. It is reasonable in these circumstances to require Attorney Spencer to pay the attorneys' fees ordered within a certain amount of time. Attorney Spencer shall pay $25,000.00 to Attorney Kramer no later than May 19, 2006 and she shall pay $25,000.00 to Attorney Parrish no later than May 19, 2006.

CONTEMPT OF COURT

This Court has also been asked to hold Attorney Spencer in contempt of this Court. There are numerous instances when Attorney Spencer has been shown to be in contempt of this Court, and this Court should punish such contempt. The Court routinely punishes contempt of litigants who fail to comply with court orders. Certainly an officer of the court with a license to practice law should be held even more accountable when she violates court orders and the law.

Miss.Code Ann Section 9-i-17 sets out this Court's contempt powers, in pertinent part, as follows: "The Supreme, circuit, chancery and county courts and the Court of Appeals shall have power to fine and imprison any person guilty of contempt of the court while sitting, but the fine shall not exceed One Hundred Dollars ($100.00) for each offense, nor shall the imprisonment continue longer than thirty (30) days.

Miss. Code Ann. § 43-21-153 sets out the power of the youth court with regard to contempt, as follows:

"(1) The youth court shall have full power and authority to issue all writs and processes including in junctions necessary to the exercise of jurisdiction and to carrying out the purpose of this chapter.

(2) Any person who wilfully [sic] violates, neglects or

refuses to obey, perform or comply with any order of the youth court shall be in contempt of court and punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment."

FAILURE TO APPEAR

The first incident of contempt that the Court will discuss is Attorney Spencer's failure to appear on January 9, 2006. She filed a notice on December 13, 2005 that all pending motions would be brought on for hearing at 10:00 a.m. on Monday, January 9, 2006. Attorney Spencer did call the court clerk and request that the Chandler matter be taken off the docket, but she failed to notify Attorney Kramer and Attorney Parrish who did appear at the appointed time. Attorney Spencer stated that it was a mistake and inadvertent, but in view of the context of all of the litigation conduct on her part, this Court should not excuse Attorney Spencer for her failure to appear.

Uniform Chancery Court Rule1.05 sets out the requirement that an attorney be present in court, as follows: "when any civil action has been set for, or adjourned to, a particular day or hour, all officers, parties, witnesses and solicitors whose presence is necessary for the trial shall be present promptly at the time set. Any negligent or willful failure to obey this rule shall be punished by contempt."

Attorney Spencer herself caused this case to be set for January 9th. She caused two other attorneys to be present while she was absent, and the court and the court staff were also available due to the setting made on the court's docket. Attorney Karen H. Spencer should be and is hereby found to be in contempt of this court for her

failure to appear at the date and time set by her own Notice of Hearing, and on that finding of contempt, she shall be incarcerated in the Clarke County Jail for a period of twenty-four hours, and she shall pay a fine to the Chancery Clerk of Clarke County in the sum of $100.00 which shall be paid by the 1st day of May, 2006. The incarceration shall be suspended on the condition that the fine is timely paid. Should Attorney Spencer fail to pay the $100.00 fine to the Chancery Clerk by 5:00 p.m. on May 1, 2006, she shall report for incarceration for twenty-four hours a t 6:00 p.m. on May 1, 2006, and the Sheriff shall release her upon her payment of $100.00 or the expiration of twenty-four hours, whichever shall first occur.

VIOLATION OF § 43-21-151(1)(c) AND

THIS COURT'S CONFIDENTIALITY ORDER

The provisions of § 43-21-153 are applicable to violations of § 43-21-151(l)(c). Attorney Karen Spencer continuously violated the confidentiality requirements of § 43-21-151(1)(c) and refused to obey this law and this Court's orders when she routinely disseminated information t o Sundra Girard. Considering the fact that the contemnor in this instance is an attorney at law, this Court must take such violations very seriously. There are numerous instances of Attorney Spencer's violation of this law and this court's orders requiring confidentiality. Attorney Spencer asserted on several occasions that § 43-21-151(1)(c) had no application to this case and she disregarded its provisions when it came to conveying information to Sundra Girard. She also disregarded this court's specific orders requiring confidentiality. Attorney Spencer copied Sundra Girard on matters concerning this confidential civil action when she sent her an e-mail with attachments of

confidential documents from this case. Attorney Spencer admitted giving to Sundra Girard a copy of this court's Bench Ruling of February 10, 2006, and shortly thereafter a perverted report of what had occurred in this civil action appeared on the internet. This Court cannot take this matter lightly and appropriate punishment should be levied against Attorney Karen H. Spencer for her willful disregard for the confidentiality provisions of § 43-21-151(l) (c) and this Court's orders.

This Court has required that Attorney Spencer's attorney, Cynthia J. Speetjens review Attorney Spencer's file and to make a report about the transfer of confidential information about this case to Sundra Girard from February 2 , 2006 through February 28, 2006. This order was appealed to the Supreme Court and the appeal was dismissed. This Court has yet to receive a copy of that report, and this court does retain jurisdiction of the issue of contempt on the part of Attorney Spencer in her relay of confidential information to Sundra Girard.

This court does find that Attorney Karen H. Spencer is guilty of contempt of court for her violation of this court's order requiring confidentiality, and is in violation of § 43-2l-15l(l) (c) and should be punished in accordance with § 43-21-153.

For dissemination of confidential information from this civil action to Sundra Girard prior to the commencement of the pro-trial motions and the trial on the merits, Attorney Karen H. Spencer shall be incarcerated in the Clarke County Jail for a period of ninety days, commencing May 19, 2006. She shall report for incarceration at 8:00 a.m. on May 19, 2006 and the sheriff shall release her following the ninetieth day of incarceration. In addition, Attorney Karen H. Spencer shall pay to the Clarke County Clerk a fine in the sum of

$500.00, said fine to be paid no later than May 19, 2006. For dissemination of confidential information from this civil action to Sundra Girard after the trial on the merits, specifically the Bench Opinion rendered February 10, 2006, Attorney Karen H. Spencer shall be incarcerated in the Clarke County Jail for a period of ninety days, said sentence to run concurrently with the sentence imposed supra, commencing May 19, 2006. She shall report for incarceration at 8:00 a.m. on May 19, 2006 and the sheriff shall release her following the ninetieth day of incarceration. In addition, Attorney Karen H. Spencer shall pay to the Clarke County Clerk a fine in the sum of $500.00, said fine to be paid no later than May 19, 2006.

VIOLATION OF ORDER REGARDING SUBPOENAS

This Court specifically required Attorney Spencer to submit subpoenas duces tecum to the court for approval prior to their being issued. This order was entered to avoid oppressive subpoenas duces tecum, and also to avoid the dissemination of confidential information from this civil action. Attorney Spencer requested permission of this court to issue her trial subpoenas on December 5 , 2005:

"MS. SPENCER: May I go ahead and have my trial subpoenas issued?

THE COURT: Okay. What all are they for?

MS. SPENCER: Just for a variety of individuals to -

THE COURT: Have you given them to Mr. Parrish?

MS. SPENCER: No, I have not.

THE COURT: I mean, we had some problems with subpoenas before. These are just witness subpoenas?

MS. SPENCER: These are witness subpoenas."

Although Attorney Spencer is an officer of the court and is bound to not knowingly make a false statement of material fact or law to a tribunal, she stood in open court and described the subpoenas she was about t o issue as "witness subpoenas. She did issue witness subpoenas that day, but she also issued the following subpoenas duces tecum:

(1) Trial Subpoena and Subpoena Duces Tecum for Jackie Odom of the Department of Human Services. The subpoena included this language: "You shall not fail under the penalty provided by law to comply with this Subpoena and Subpoena Duces Tecum and produce documents attached on Exhibit A." Exhibit A was a separate sheet of paper on which was typed the following language: "The July 2004 investigation file maintained by the DHS concerning Kayleigh Chandler's sexual abuse which occurred in approximately June and July 2004, including but not limited to the investigation, any conclusions, the original or a copy of Kayleigh's note and drawing of an erect penis which stated, 'For Mamma's eyes only; my privates hurt real bad', and all other documents contained in the file and a copy of the DHS file concerning Kayleigh and Michael Chandler being placed in foster care."

Trial Subpoena Duces Tecum to Quitman School District.

(3) Trial Subpoena and Subpoena Duces Tecum to John Webb O'Bryant, MDHS Regional Director. This subpoena duces tecum contained the language o f "Exhibit A" above in the text of the subpoena, on the front page.

(4) Trial Subpoena and Subpoena Duces Tecum to Lisa Robinson of the Department of Human Services. This

subpoena duces tecum contained the language of "Exhibit A" above in the text of the subpoena, on the front page

(5) Trial Subpoena and Subpoena Duces Tecum to Brunette Jones of the Department of Human Services. This subpoena had attached the Exhibit A described above.

I n issuing the above subpoenas duces tecum, Attorney Spencer made a materia l misrepresentation to this court ,nd violated this court's order that Subpoenas Duces Tecum be submitted to the Court for review and approval prior to their issuance. By including the graphic language in Exhibit A, she also disseminated confidentia l information from this civi l action in violation of §43-21-151(1) (c).

She exposed that information not only to the subpoenaed witness, but also the process server hired to serve the subpoenas. Such conduct on the part of an attorney at law cannot go unpunished. It should also be noted that the "drawing of the erect penis" is Attorney Karen Spencer's interpretation of Kayleigh's drawing on the note she gave her mother. Donna Moore, the first counselor that talked to Kayleigh, reported that the child described the drawing as a girl with long hair. Kayleigh had drawn tears on the girl's face, and was afraid she would upset her mother so she blacked out the face and drew smiley faces around the drawing.

The Subpoena Duces Tecum issued for the Quitman School District did violate this court's order because it was not submitted for review and approval, but it did not contain confidential information from this case. Attorney Spencer is found to be in contempt of this Court for issuing this subpoena and should be and hereby is fined

the sum of $100.00 for her contempt of court. Said payment shall be made to the Chancery Clerk of Clarke County no later than May 19, 2006.

The Subpoenas Duces Tecum issued for Jackie Odom, John Webb O'Bryant, Lisa Robinson, and Brunette Jones were issued in violation of this Court's order requiring review and approval before issuance of subpoenas duces tecum, and also violated the confidentiality provisions of § 43-21-151(l) (c) . On each of these four instances of contempt and violation of § 43-21-151(1)(c), this Court does find that Attorney H. Spencer shall be incarcerated in the Clarke County Jail for a period of ninety days on each count, said sentences to run concurrently with the previously adjudicated incarceration. In addition, Attorney Karen H. Spencer shall pay a fine of $500.00 for each such subpoena issued in violation of this Court's orders regarding issuance of subpoenas duces tecum, the confidentiality orders, and the violation of § 43-21-151(1)(c).

Said fines of $500.00 each totaling $2,000.00 shall be paid to the Chancery Clerk of Clarke county no later than 5:00 p.m. on May 19, 2006.

RULES OF PROFESSIONAL CONDUCT

This Court has been requested to refer this matter to the Mississippi State Bar for appropriate disciplinary proceedings. It is clear that Attorney Spencer has made material misrepresentations to this court. Although her client stated in open court that she brought her computer with her from Texas when asked about it on September 20, 2005, Attorney Spencer filed a statement in response to a subpoena for Donna Chandler's computer that Donna Chandler does not own a computer. Attorney Spencer also made a material misrepresentation to the court when

she stated that the subpoenas to be issued December 5, 2005 were witness subpoenas. Attorney Spencer also modified an order ("natural parents" changed to "mother") and failed to include crucial language about legal custody remaining with DHS in the December 5, 2005 order.

This court has found Attorney Spencer to be in contempt and has issued serious fines and incarceration penalties. The Court is mindful that these penalties will have a significant effect on Attorney Spencer. However, her conduct in this litigation has been so egregious that the Bar should be notified concerning Attorney Spencer's conduct. A copy of this Opinion shall be mailed to the Bar's complaint counsel under seal, for appropriate consideration.

ATTORNEY SPENCER'S FILE

This court has also been requested to review Attorney Spencer's file for possible evidence of her complicity in the disappearance of her client and the minor children . This is a very serious request, and it is also a very serious matter when an attorney may be implicated in the commission of a crime. This court has already required Attorney Spencer's attorney, Attorney Speetjens to make limited reviews of Attorney Spencer's file and to make reports to the Court. One such report is still outstanding.

Attorney Spencer has made misrepresentations to this Court in violation of Mississippi Rules of Professional Conduct, Rule 3.3(a)(1). Should a lawyer have information concerning a client's commission of a crime, that information is excepted from the confidentiality requirements of Rule 1.6. This Court has not wanted to review Attorney Spencer's file. As stated previously, Attorney Spencer is an officer of the court and has a duty

of candor toward the tribunal. Due to the fact that Attorney Spencer has been found to have violated these rules and due to the fact that very serious allegations and concerns have been registered concerning Attorney Spencer's possible complicity in the disappearance of Donna Chandler and the minor children , the court finds that it is appropriate for this court to appoint an impartial attorney as Special Guardian ad Litem for the children in this regard.

Therefore, this Court does appoint Honorable James E Williamson as a Special Guardian ad Litem for Kayleigh and Michael Chandler. Attorney Spencer shall post with the Chancery Clerk the sum of $5,000.00 as court costs to cover the fees of the Special Guardian ad Litem. Said sum shall be posted by Attorney Spencer with the Chancery Clerk of Clarke County no later than May 19, 2006. Attorney Spencer shall surrender her file to the Special Guardian ad Litem no later than May 19, 2006.

The Special Guardian ad Litem shall review the attorney file of Attorney Spencer for any and all information which may shed light on the location of Kayleigh and Michael Chandler and shall report such information to the court and shall also report any other items which might be of interest to this court in his report. He shall also determine if Attorney Spencer was in any way involved in the obtaining of passports for the minor children. Said passports were obtained with the forged signature of David Chandler shortly after Attorney Spencer became involved in this case. The attorneys of record shall fully cooperate with the Special Guardian ad Litem so that he may fulfill his duties as expeditiously as possible.

Attorney Kramer shall meet with Attorney Williamson and shall prepare a separate order setting out the duties to

be performed by Attorney Williamson. Said order need not be presented to Attorneys Spencer and Parrish. It will be reviewed by the court and entered when it meets the court's requirements.

In addition, this Court has been requested to require Attorney Spencer to disgorge the fees paid to her so that monies can be made available for the search for the minor children. This court does find that it is reasonable to require Attorney Spencer to account for all fees paid to her by Donna Chandler and Sundra Girard so that the Court can make a determination of whether any such disgorgement should be required. Said accounting of fees paid shall be filed with this Court no later than May 19, 2006.

The cost of transcription will be assessed to Attorney Karen H. Spencer and shall be paid to the court reporter within ten days of receipt of copy of Memorandum Opinion and Judgment.

RENDERED this the 18th day of April 2006.

s/Sarah P. Springer
CHANCELLOR

APPENDIX B

IN THE CHANCERY COURT OF CLARKE COUNTY
STATE OF MISSISSIPPI

DAVID CHANDLER PLAINTIFF

VS. CIVIL ACTION FILE NO. 00-038S

DONNA CHANDLER DEFENDANT

MEMORANDUM OPINION AND JUDGMENT

This Court conducted hearings of pre-trial motions on February 3,6, 7, 8, and 9, 2006, and conducted the trial on the merits on February 10, 2006. The Court rendered a Bench Opinion and Judgment on February 10, 2006, and reserved ruling on the sanctions motions filed by David Chandler and the Guardian ad Litem, Edward N. Kramer, III, due to the volume of the case file which required review by the Court prior to a ruling on the request for sanctions against Donna Chandler and her attorney, Karen H. Spencer. Subsequently, the Court conducted a hearing on February 28, 2006, on the Motion to find Attorney Karen Spencer in Contempt filed after confidential information from this civil action appeared on the Internet.

The Court required Attorney Spencer's attorney, Attorney Cynthia Speetjens to make a report to the Court concerning communications between Attorney Spencer and her client Sundra Girard, and Attorney Spencer and Speetjens applied to the Supreme Court of Mississippi for an emergency stay of this Court's proceedings, so there has been a delay in the issuance of this opinion due to the order issued by the Supreme Court.

The Court will address the Motion for Contempt and Attorney fees filed by Attorney Kramer on January 26, 2006, the Motion for Sanctions and Costs filed by Mr. Chandler on January 27, 2006, the Response to Motion for Sanctions filed by Attorney Karen Spencer on her own behalf and on behalf of Donna Chandler (the Court previously denied the Counter Motion for Sanctions) filed on February 2, 2006, and the Motion to Find Attorney Karen Spencer in Contempt which was filed on February 21, 2006.

PROCEDURAL HISTORY

The parties to this civil action were divorced by Judgment Granting Divorce and Related Relief entered on December 13, 2000, and dated December 5, 2000. Donna and David agreed in their Separation, Child Custody Support and Property Settlement Agreement that they should have joint legal custody of the two minor children, Kayleigh, born January 7, 1995, and Michael, born October 16, 1997. David was awarded reasonable and specific rights of visitation pursuant to the "Chandler Visitation Schedule" attached to the property settlement agreement.

David initiated the current proceedings by filing a Petition for Modification and to Cite Defendant in Contempt on October 29, 2004. Donna had moved to Texas and had not filed the required Chancery Court Rule 8.06 notice with regard to her change of address, and process was not had on Donna until November 30, 2004. The motion was noticed for January 13, 2005, and Attorney Lawrence Primeaux entered his appearance on behalf of Donna on January 10th, 2005, and requested a continuance. At the same time, Attorney Primeaux filed a Motion for Appointment of Guardian ad Litem, as well as an Answer and Counterclaim. The counterclaim

included allegations concerning sexual abuse of Kayleigh by her father. The Court appointed Attorney Edward N. Kramer as Guardian ad Litem by order entered on the 7th day of February, 2005. This order set the case for trial on April 18, 2005 and scheduled a conference for February 10, 2005. A subpoena issued at David's request to compel Donna's attendance at the conference, and Donna responded with a request to quash the subpoena. Following a conference with the Court on February 10, 2005, an Agreed Order was entered requiring Donna to appear with the children at Attorney Kramer's office on March 21, 2005.

Attorney Kramer was unable to complete his report in time for the April trial date, and the trial was rescheduled for July 25, 2005. Donna's attorney objected to the July setting, which was scheduled without notice to Mr. Primeaux nor Attorney Kramer, and the terms of the order allowed for objection due to the lack of notice. The trial was rescheduled for September 19, 2005.

In June 2005, David filed a motion for summer visitation. An order was entered on July 11, 2005, which allowed David supervised visitation with his children. This order was entered over the objection of Donna's attorney, Lawrence Primeaux. The visitation required by this order was to take place commencing July 16, 2005. The visitation did not take place because Donna did not comply with this Court's order. Donna applied for and received a Temporary Ex Parte Protective Order in the State of Texas on July 18, 2005. Attorney Primeaux filed his motion to withdraw as Donna's lawyer on July 19, 2005. On July 29, 2005, David filed his Amended Petition for Modification of Custody and to Cite Defendant in Contempt. An Agreed Order allowing Attorney Primeaux to withdraw and substituting

Attorney Joseph A. Kieronski, Jr. as Donna's attorney was entered on August 15, 2005. On the same day, Attorney Kramer filed his preliminary Report in which he expressed grave concerns regarding possible manipulation of the child Kayleigh with respect to the allegations against David. He also stated that he would be unable to properly conduct his investigation without access to the children.

On August 16, 2005, this Court entered an Order Sua Sponte directing Donna Chandler to deliver the children to Attorney Kramer's office at 3:00 p.m. on Friday, August 19, 2005, so that the Department of Human Services could assume custody of the children. The attorneys of record approved this order as to form.

On August 19, 2005, Sundra Girard, represented by Attorney Karen Spencer, filed by facsimile transmission her Motion to Intervene and/or Modification and/or for Reconsideration or Clarification of Order Sua Sponte. This Motion was joined in by Donna Chandler, who at the time was represented by Attorney Kieronski. This motion had attached to it confidential medical and psychological records concerning the minor child Kayleigh Chandler. Set out in the body of the motion is an assertion that the Motion is filed "to temporarily suspend the operation of the August Order." Attorney Karen Spencer signed this pleading as attorney for Sundra Girard and Donna Chandler, and attached a certificate of service to Attorneys Kieronski , Primeaux, and Kramer.

On August 20, 2005, a Saturday, Attorney Karen Spencer, on behalf of Sundra Girard and Donna Chandler, via fax filed and noticed Attorneys Kieronski, Parrish (David Chandler's attorney) and Kramer, a Motion for Emergency/Expedited Hearing on Motion to

Intervene and/or for Modification and/or Clarification of Order Sua sponte. The case was docketed to be heard on Monday, August 22, 2005 at 9:00 a.m. On August 22, 2005, Attorney Karen Spencer filed an affidavit of Donna Chandler in support of the Motion for Reconsideration, and hand-delivered copies to Attorneys Kieronski, Parrish, and Kramer. Attorney Kieronski presented to the Court his Order Allowing Withdrawal and Substitution of Counsels the morning of August 22, 2005.

The Court conducted a hearing on the Motion for Intervention and for Modification and/or for Reconsideration on August 22, 2005, and denied Sundra Girard's request to intervene and denied the Motion for Reconsideration. On the same day, the case was set for trial on September 20 and 21, 2005.

On August 24, 2005, Attorney Spencer caused trial subpoenas to issue for Loren Larson, University of Mississippi Medical Center, Collin County Children 's Advocacy Center, Bobbie Owen, Pat Graves, Jay Stallings, Tammy Larson, Rev. Glenn Lafferty, Chelsea Stallings, H.C. Watkins Memorial Hospital, Tammy Henderson, M. D., and Jack McHenry, M.D. On August 26, Attorney Spencer caused subpoenas to be issued for Dr. David Grantham from Shepherd's Staff and for the Wesley House.

After the hearing on August 22, 2005, Attorney Karen Spencer via facsimile and first class mail sent a letter dated August 25, 2005 to Attorney Kramer with copies to the Chancery Clerk, Donna Chandler, and Sundra Girard. She had begun her demands on the Guardian ad Litem with this letter, and included Sundra Girard in the process despite the provisions of Section 43-21-151(1)(c).

On September 2, 2005, Attorney Spencer caused to issue a Subpoena for Deposition and Subpoena Duces Tecum for Dr. L. Mullins, Dr. Magolia Castilla, or other physician who could testify with regard to medical records of the University Medical Center in Jackson, Mississippi.

On the same day, Attorney Stewart Parrish on behalf of David Chandler filed a Motion to Quash the deposition subpoena due to his unavailability on the date the deposition was scheduled (September 9, 2005) and due to the fact that it was scheduled so closely to the trial date. Attorney Spencer sent a letter to Attorney Parrish concerning the deposition schedule, attaching copies of Kayleigh Chandler's confidential medical records, and copied the Court and Attorney Kramer.

On September 6, 2005, Attorney Spencer caused additional trial subpoenas to issue to Julie Wright, Counselor. On September 8, 2005, Attorney Stewart Parrish caused a subpoena to issue for Kenny Graham of the Lauderdale County Sheriff's Department.

Donna Chandler filed her Answer to Amended Petition for Modification, Motion to Dismiss and Amended Counterclaim on September 8, 2005. Also on September 8, 2005, Attorney Karen Spencer caused to issue trial subpoenas and subpoenas duces tecum for Stephen Adcock, Heartfelt Hospice, David Chandler, Faith Christian Church, Texas Department of Family and Human Services, Clarke County Department of Human Services, and Sacky Holdiness.

The Court scheduled a status conference for September 12, 2005, and Donna Chandler filed her Status Report and Motion for Change in Custody on September 9, 2005. Attached to this status report and motion were

numerous exhibits, including copies of Kayleigh's confidential medical records.

On September 12, 2005, Donna filed a Response to David's Motion to Quash the Deposition Subpoena and attached copies of Kayleigh's confidential medical reports along with other exhibits.

On September 12, 2005, Donna by her lawyer caused to be issued a trial subpoena and subpoena duces tecum for David Chandler and Attorney Karen Spencer served the subpoena on David in the courtroom.

On September 16, 2005, Attorney Spencer caused to issue a trial subpoena duces tecum for Harold Brasfield. Heartfelt Hospice, through counsel, filed a Motion to Quash the Trial Subpoena and Subpoena Duces Tecum caused to be issued by Attorney Karen Spencer. The Guardian ad Litem did not have sufficient time to finish his report in time for the September 20, 2005 court date, and the Court continued the trial to allow additional time for the report to be completed. The progress on the Guardian ad Litem investigation was impeded in part by Hurricane Katrina, which caused damage to the office of the psychologist originally scheduled to interview the children (on August 29, 2005) and which caused damage to Attorney Kramer's office and equipment.

The order on the September 20th proceedings was entered by the Court on November 14, 2005. In this order the case was set for trial on February 3, 6, 7, 8, and 9, 2006. Although this civil action was already confidential by operation of law, Miss. Code Ann. Section 43-21-151(l)(c), this Court specifically ordered the court file sealed during the proceedings on September 20, 2005, and the Order entered November 14 contained the same confidential requirement.

On behalf of Donna, Attorney Karen Spencer filed her Second Motion t o Return Custody to Mother on September 27, 2005. Again, confidential medical reports of Kayleigh Chandler were attached, among other exhibits. The Court had scheduled a status conference for October 6, 2005, in Meridian, and Attorney Karen Spencer noticed her Second Motion for a hearing at the time of the status conference.

On September 30, 2005, Donna filed her Motion for Emergency/Expedited Hearing on Motion to Return Custody to Mother. Due to Lauderdale County conflicts on October 6, 2005, the status conference was continued and Attorney Spencer renoticed it for October 10th in Clarke County. Attorney Parrish objected to the setting due to his obligation for a trial in Kemper County.

On October 12, 2005, Attorney Karen Spencer, on Donna's behalf filed an Amended (Second) Motion to Return Custody to Mother. Again, there were numerous attachments, including copies of Kayleigh's confidential medical and psychological reports. According to Attorney Spencer's testimony, the original filing had a mis-ordering of the attachments, and this motion was filed to correct the mis-ordering . The motion and its attachments take up over an inch of space in the court file, and this is the second filing of the same motion.

On October 18, 2005 by fax, and on October 19, 2005 by mail, Donna filed a Motion for Order Scheduling the Trial of all pending Issues. On October 19, 2005, Donna, by Attorney Spencer, filed a Motion to Require the Guardian ad Litem to File Report Returning Custody to Donna M. Chandler.

The court file in this case swelled to tremendous proportions not only due to the number of filings, but

also due to the vast quantity of attachments which were filed unnecessarily, and also due to the fact that almost all the filings made by Attorney Karen Spencer were first faxed and then mailed. There is a tremendous amount of duplication in the court file.

Volume VI of the court file opens with a Motion to Terminate visitation filed by David Chandler. His motion includes a copy of a letter from Attorney Karen Spencer to Attorney Stewart Parrish asking him to join her in bringing pressure to bear on the Guardian ad Litem, Attorney Nick Kramer.

On November 7th, 2005 by fax, and again November 8th, 2005 by mail. Donna through Attorney Karen Spencer filed a Motion for Contempt.

On November 7th, the Court set a due date of December 5th, 2005, for the Guardian Ad Litem's report. Attorney Kramer prepared an order concerning the due date of the Guardian ad Litem report, and in paragraph III of that order, Attorney Spencer modified the language of the order to contemplate return of custody to the "mother" rather than "natural parents" as set out by the Guardian Ad Litem.

Attorney Karen Spencer filed a Notice of Status Conference for December 5th, 2005, and Attorney Parrish objected due to the fact that he was involved in a murder trial in Grenada at the date and time.

On November 23, 2005, Attorney Stewart Parrish, on behalf of David Chandler caused to issue a Subpoena Duces Tecum for Donna Chandler's personal computer for a hard drive examination.

On November 28, 2005, David filed a Motion to produce for Forensic Evaluation, requesting that the original note

from Kayleigh to her mother be tendered so that Forensic testing of the original note could be performed. Via Federal Express Next Day delivery, Attorney Karen Spencer sent a letter to this Judge with a copy for the court file, in which she described with specificity the contents of the note. This letter dated, November 28, 2005, does not indicate that a copy was sent to Attorneys Parrish or Kramer.

On December 1, 2005, Donna filed a Motion to Lift the Gag Order, alleging that David had violated the gag order and also alleging confidentiality of the proceedings violated the Mississippi Constitution and the United States Constitution. On December 1, 2005, Attorney Karen Spencer noticed the depositions of David Chandler and Attorney Kramer, the Guardian ad Litem, and signed the notices as Attorney for "Donna Chandler & Sundra Girard."

In response to the Deposition Notice, Attorney Kramer filed a Motion for Direction and Protective Order on December 1, 2005.

On December 2, 2005, Donna by her attorney filed her "Response in Opposition to Motion for Forensic Evaluation." Attorney Spencer also filed discovery requests.

On December 5, 2005, Attorney Kramer filed his Interim Report of Guardian ad Litem, in which he recommended that custody of the two minor children remain in the Clarke County DHS, with placement in the home of the mother, Donna Chandler, in Quitman, Mississippi, with liberal visitation with the father David Chandler. The Court in the hearing held on December 5, 2005 asked Attorney Spencer if she and her client were agreeable to the recommendation, and receiving Attorney Spencer's

affirmative response, the Court directed Attorney Spencer to draft the order returning physical custody to Donna Chandler. The Order presented by Attorney Spencer did not specifically reserve legal custody in the Department of Human Services.

On December 13, 2005, Attorney Karen Spencer filed a response to the Subpoena issued by David Chandler for Donna Chandler's computer as follows: "Donna does not own a computer." The transcript of the proceedings held on September 20, 2005 included Attorney Spencer asking Donna whether she brought her computer from Texas and Donna's response, "I did." See page 46, lines 20-22 in the transcript which was attached as Exhibit L to Donna's (Second) Motion to Return Custody to Mother, and her Amended (Second) Motion to Return Custody to Mother.

The Guardian ad Litem prepared and presented to the Court a Revised Order Returning Custody to Donna Chandler which reflected the Court's ruling that legal custody was to remain with the Clarke County DHS with physical custody to Donna Chandler, and attached a copy of the transcript of the proceedings which took place on December 5, 2005.

Attorney Karen Spencer expressed surprise that the Court had made that ruling and said she was "amazed" to read the transcript of the proceedings which reflected that legal custody was to remain with DHS. Attorney Spencer testified that proceedings were had prior to the opening of the record, but the Court Reporter's notes and back-up audiotapes indicate otherwise. A summary of Attorney Spencer's version of the events contained in her letter to Attorney Kramer dated December 15, 2005 and attached to her Response to sanctions Motions filed against her by Attorneys Kramer and Parrish.

Due to Attorney Spencer's faulty recollection of the proceedings on December 5th, Attorney Kramer had the proceedings transcribed and presented the Revised Order to the Court. By that time Donna Chandler had absconded with the two minor children. DHS's investigation revealed that passports had been obtained for the children shortly after their custody was placed with DHS.

The transcript also reflects Attorney Spencer's request of the Court that she be allowed to issue trial subpoenas. She classified the subpoenas as witness subpoenas, but the subpoenas included subpoenas duces tecum and the graphic description of Kayleigh's note. The Court specifically asked Attorney Spencer if she had given them to Attorney Parrish, and she had not, and then asked Attorney Spencer if they were " just witness subpoenas" and Attorney Spencer stated "These are witness subpoenas." See page 5 of the December 5 transcript, lines 10 through 22.

Attorney Karen Spencer on December 5, 2005 issued additional trial witness subpoenas for Gary Riley, Attorney Larry Primeaux, Harold Brassfield, Donna Moore and Melanie Chandler. She issued a trial subpoena and subpoena duces tecum on Jackie Odom of the Clarke County DHS and included in the issued subpoena a graphic description of the note given by Kayleigh to her mother. She issued a subpoena duces tecum for the Quitman School District. Another subpoena was issued at Attorney Spencer's request for John Webb O'Bryant, MDHS Regional Director and included a graphic description of the note given by Kayleigh to her mother. Another such subpoena with the graphic description was issued at Attorney Spencer's request for Lisa Robinson of the DHS, and a similar

subpoena with the same graphic description was issued for Brunette Jones of the DHS.

These subpoenas duces tecum were not submitted to the Court for approval as required by the rulings concerning subpoenas made on September 20, 2005 and Attorney Spencer made a misrepresentation to the Court when she asked for leave to issue the subpoenas.

On December 13, 2005, Attorney Spencer on behalf of Donna Chandler noticed all pending motions for hearing at 10:00 am on Monday, January 9, 2006. Attorneys Parrish and Kramer appeared for court on that day, but Attorney Karen Spencer failed to appear. On January 17, Attorney Spencer filed a Motion to Correct Factual Errors or Omissions in the Record, alleging that the record did not include information that she conveyed to the Court Clerk on the telephone.

On January 17, 2006, Attorney Spencer filed her Motion to Withdraw as Attorney of Record due to the fact that Donna Chandler could not be located.

The Guardian ad Litem filed his Second Interim Report on January 26, 2006. He was unable to complete a final report due to the fact that Michael and Kayleigh Chandler were removed from school and taken from this Court's jurisdiction on the day following the entry of the December 5, 2005 Order which omitted the provision that the children remain in the legal custody of DHS and that physical custody should be with Donna Chandler in Quitman, Mississippi.

Attorney Kramer also filed a Motion for Contempt and Attorney Fees on January 26, 2006, and attached a letter of Attorney Karen Spencer to him dated October 26, 2005 as an example of harassment and threats he asserts he received at Attorney Karen Spencer's hands. Attorney

Parrish, on behalf of David Chandler, filed a Motion for Sanctions and costs invoking MRCP Rule 11, and the Mississippi Litigation Accountability Act, Section 11-55-1 et seq. Attorney Spencer filed her Response to Motion for Sanctions and Counter Motion for Sanction on February 2, 2006. Attorney Spencer also filed a Response to David's Motion to Strike Donna's pleadings, and a Response t o Kramer's Motion for Contempt and filed a Counter Motion to Disqualify and Remove Guardian ad Litem.

Hearings on the motions were conducted February 3, 6, 7, 8, and 9, 2006. The Court ruled on all of the motions except the Contempt Motion filed by Attorney Kramer and the Sanctions Motion filed by Attorney Parrish. The Court made its ruling on the merits of the case from the bench on February 10, 2006, which was transcribed and entered as the court's Judgment on February 14, 2006. The Court prepared a Judgment corresponding with Bench opinion and Judgment to avoid dissemination of the Bench Opinion in which contained confidential information.

Attorney Karen Spencer filed a Motion to Lift the Gag Order for a Specific Purpose on February 13, 2006. Her signature is dated February 10, 2006, the final day of the trial on the merits. On the same date, Attorney Spencer filed a Motion to Lift Gag Order, also signed on February 10, 2006. This Motion mirrored the prior motion Attorney Spencer filed requesting lifting the gag order.

David Candler filed a Motion to Find Attorney Karen Spencer in contempt which was heard on February 28, 2006. Attorney Spencer filed her Response to Find Attorney Karen H. Spencer in Contempt on February 22, 2006. Included in her response was this statement: "Spencer questions whether the youth court provisions

which prohibit discussing the proceedings apply in a Chancery Court matter such as this civil action."

Prior to the hearing held on February 28, 2006 and prior to the court ruling of the pending motions which had been taken under advisement, Attorney Spencer, on behalf of Donna Chandler, filed a Notice of Appeal to the Supreme Court of Mississippi on February 27, 2006. On the same day, Attorney Karen Spencer filed a Notice of Appeal to the Supreme Court of Mississippi on behalf of Sundra Girard. This notice seeks an appeal of all matters in this civil action through the rendering of this court's Bench Opinion and Judgment and Judgment Corresponding with Bench Opinion and Judgment even though Sundra Girard was not a party to the proceedings after her motion to intervene was denied. Attorney Spencer's Certificate of Compliance dated February 27, 2006 indicated that $7,903.62 had been paid by Sundra Girard for the preparation of the record for appeal. A similar Certificate of Compliance is filed for Donna Chandler.

At the hearing conducted on the Motion to hold Attorney Karen H. Spencer in contempt for alleged dissemination of confidential information from this Court action to third parties, the Court ordered Attorney Cynthia Speetjens to review Attorney Spencer's file from the date range of February 2, 2006 through February 28, 2006 and make a report of communications between Attorney Spencer and her client Sundra Girard which contained confidential information from this civil action. Attorney Spencer and Attorney Speetjens applied to the Supreme Court for emergency relief to stop the operation of the order, and that relief was granted by the Supreme Court on March 10, 2006. The Supreme Court stayed all proceedings in this civil action including motions set for

hearing on March 13, 2006, and the issuance of this opinion. The Supreme Court denied the Motions filed by Donna Chandler, Sundra Girard, Karen Spencer and Cynthia Speetjens, and the stay was lifted on April 14, 2006.

SUMMARY OF THE FACTS

In the summer of 2004, Kayleigh Chandler gave her mother a note which indicated that she was having some pain in her genital area. Kayleigh was taken by her mother to a Christian Counselor in Jackson who referred her to Dr. Tammy Henderson, a general practice physician who limits her practice to pediatrics. Tammy Henderson observed some abnormalities when she did a pelvic exam on Kayleigh and advised Donna Chandler to take her to the University Medical Center for evaluation as to whether a sexual abuse situation existed. UMC'S report on their examination of Kayleigh was inconclusive on the issue of sexual abuse.

Charges for "lustful touching " were pressed against David Chandler, and the case was submitted to the Lauderdale County Grand Jury. The Grand Jury failed to indict David Chandler.

Donna Chandler moved to Texas with the children and denied David visitation. H filed a Complaint to enforce his right to visit with his children and Donna made the accusation in the Chancery Court proceeding that David had sexually abused Kayleigh. This accusation necessitated the appointment of a Guardian ad Litem for the children and made this civil action a confidential matter pursuant to Miss. Code Ann. Section 41-21-151(c)

Due to the fact that the children were in Texas with their mother the Guardian ad Litem needed Donna to bring the children to Mississippi so he could do his required investigation and make a report to the Court. The Court ordered Donna to bring the children to Mississippi for spring break 2005, and ordered supervised visitation for David with the children. The visitation exchanges were to take place at Attorney Kramer's office, no overnight

visitation was allowed, and David's contact with the children had to be in the presence of others at all times. According to the Guardian ad Litem the children were overjoyed to be with their father again and the visitation went well throughout the week. On Thursday of the spring break week, Kayleigh was a bit withdrawn, apparently because her father would not allow her to use her cell phone in the car on the way from Meridian to Quitman. This visitation ended at 5:00 pm and at midnight Attorney Kramer was called to Watkins Hospital because Kayleigh had a panic attack. Donna left town with the children after this and returned to Texas. David did not have the scheduled Friday visitation.

The Court entered another order requiring Donna to bring the children to Mississippi for supervised visitation with their father and so that the Guardian ad Litem could have access to the children to prepare his report to the Court. Rather than comply with this Court's Order, Donna sought ex parte relief in Texas and did not notify the Texas Court of the pendency of this civil action.

Due to Donna's non-compliance with the orders of this court and the Guardian ad Litem's grave concerns that the children were being manipulated, this court entered an order requiring Donna to deliver the children to Attorney Kramer's office in Quitman at 3:00 pm on Friday August 19, 2005 where the Clarke County Department of Human Services would take custody of the children. Donna failed to comply with this order.

Attorney Karen Spencer entered an appearance in this civil action on Friday, August 19, 2005 by faxing a Motion to Intervene and/or Modification and/or for Reconsideration of the Order Sua Sponte. Attorney Spencer testified that she advised Donna Chandler not to

comply with the August 16, 2005 Order because she had filed this Motion on behalf of Sundra Girard joined by Donna Chandler. A vast quantity of documentation was attached to this Motion including confidential medical records of Kayleigh Chandler. Attorney Spencer testified that her understanding of Rule 59 was that filing a Rule 59 Motion stayed the operation of the Court's order. Attorney Spencer's advice to Donna Chandler caused her to not comply with this Court's Order.

Despite the short notice, the Court allowed Attorney Spencer t o present her motion on August 22, 2005. This court's first impression of Attorney Karen Spencer was that she was a newly licensed attorney with one case to handle. She took zealous representation of a client to new dimensions. Within two days of undertaking representation of Donna chandler (the Curt did not allow intervention by Sundra Girard), Attorney Karen Spencer had caused to be issued fourteen subpoenas. Two more subpoenas were issued two days later the following week she issued a deposition subpoena to doctors at the University Medical Center and another witness subpoena. On September 8th, she caused seven more subpoenas to issue.

The Court scheduled a status conference on September 12, 2005, intended to be a meeting between the Court and the attorneys to determine whether the case would be ready for the trial scheduled in the latter part of September. Attorney Spencer filed a voluminous status report with attachments duplication those filed with the original motion including confidential medical and psychological records of Kayliegh Chandler. She also filed a response to David's motion t o quash with the same voluminous exhibits attached.

It should be noted that Attorney Spencer managed to do

all this work and file all of these documents despite the impact of Hurricane Katrina which basically shut down Lauderdale and Clarke Counties for over a week. At the same time, she was inundating Attorney Kramer and Attorney Parrish with not only the motions and attachments, but also letters, faxes, and phone calls. Attorney Kramer testified that his fee bill was three times what it normally would have been in a case like this. He felt harassed and threatened by Attorney Spencer. She sent him letters which threatened to hold him legally and morally responsible for anything adverse happening to the children. She even went by his office on September 16, 2005 and asked him to tell her the factual basis for his theory of manipulation by Donna Chandler, and when he would not tell her anything, she demanded a copy o f his Guardian ad Litem file, which demand Attorney Kramer refused. Attorney Kramer believes that Donna and her mother Sundra Girard conspired to remove the children from the jurisdiction and believes that Attorney Spencer's action are suspect. He opined that the plethora of pleadings filed by Attorney Karen Spencer were frivolous and constitute harassment. He felt he was the recipient of intimidation and harassment from Attorney Spencer. An example of the threatening language used by Attorney Spencer toward Attorney Kramer is contained in her letter to Attorney Kramer of September 26, 2005: "Donna Chandler will be forced to take all necessary steps to protect her children." In view of what transpired, this certainly was prophetic language.

Attorney Kramer believes that Attorney Spencer violated Rule 3.1 and 3.3 of the Mississippi Rules of professional conduct in making false statements of fact and law to the Court. The Judgment she prepared on December 5, 2005 did not conform to the Bench Ruling, and he believes there was a criminal conspiracy between Attorney

Spencer and Donna Chandler.

The Order of November 7th, 2005 was modified by Attorney Spencer after Attorney Kramer had signed it she crossed out "natural parents" and put "mother" and initialed the change. Attorney Kramer testified that the change was minor, but the order which was presented to the Court was not the order that he signed.

Attorney Spencer sent a letter dated October 25, 2005 to Attorney Stewart Parrish and did not copy Attorney Kramer with the letter, which has been marked as Exhibit 10.

In her September 29, 2005 Motion for Emergency/Expedited hearing on her Motion to Return Custody to Mother, Attorney Spencer alleged that Kayleigh was suicidal. This was not true but represented to the Court to be true by Attorney Spencer.

The Court took judicial notice of the Guardian ad Litem's Motion for Direction and Protective Order filed on December 1, 2005.

When Attorney Kramer attempted to correct the deficiency in the December 5, 2005 Order, Attorney Spencer insisted in correspondence that she was accurate in her recollection of the proceedings. When Attorney Spencer testified she stated that under the facts of the case at hand the definition of a Guardian ad Litem as independent, questioning everything, and taking nothing at face value in order to protect the best interest of the child did not apply. When questioned about case law which instructs guardians ad litem to be independent from all sides, answerable only to the judge, she asked to be shown the case that held that. Throughout her representation of Donna Chandler in this matter, Attorney Spencer treated Attorney Kramer as if he were

"the enemy" rather than as an attorney appointed by the Court as Guardian ad Litem to represent the children and to assist the court in dealing with the sexual abuse allegations.

When questioned about providing documents to Sundra Girard, Attorney Spencer testified that she could not remember exactly but that if there were any document that concerned Sundra Girard, she would provide it to Dr. Girard. She also stated that she did not believe Dr. Girard was a "third party" with respect to the confidentiality requirements of this litigation. While testifying, Attorney Spencer told Attorney Kramer "You are unqualified in all respects to do the Guardian ad Litem job" she proceeded to identify what she considered to be factual misstatements and conclusions in the Guardian ad Litem's reports which she stated could not be supported by evidence. Attorney Spencer described the January 26, 2006 reports as "amazingly inaccurate".

With respect to the December 5, 2006 [sic] order, Attorney Spencer testified that she had no notion that the judgment she prepared was inaccurate and was "shocked" to see legal custody remaining with the Department of Human Services in the transcript. She stated that any misstatement on her part was completely unintentional and that she was absolutely amazed when she saw what was in the transcript. Attorney Spencer stated that before the gag order was entered, there was not confidentiality attached to this civil action despite the provisions of Section 43-21-151(l)(c) but when the statute was read to her she acknowledged that the proceedings are confidential. She testified that she had numerous discussions with Donna and Dr. Girard about maintaining the confidentiality of this civil action.

Attorney Spencer asserted that the paperwork she filed

was not excessive and that to do any less she would have been committing malpractice.

Attorney Kramer sent her a letter dated 9/28/2005 requesting that she direct communication to the court through normal motion practice, but despite that she continued to send Attorney Kramer correspondence and faxes.

Attorney Spencer testified that she consulted with numerous "experts" concerning this case. She consulted with a grand jury expert about why David Chandler was not indicted. She hired Sacky Holdiness, a counselor. She hired Rebecca Whitley Watkins and identified her as a "child abuse expert". She consulted with Attorneys Mark Chinn, William Wright and Law Professor Debbie Bell. Attorney Spencer testified that all experts advised her that she was handling the case in an appropriate manner and she should not worry about it so much.

In her 10/26/05 letter t o Attorney Kramer, Attorney Spencer told Attorney Kramer not to meet with Kayleigh alone. She testified that she should have filed a motion to have Attorney Kramer removed as Guardian ad Litem because he is perhaps not qualified to protect the interest of the children. She stated that Attorney Kramer had not protected Kayleigh Chandler in any way at any time that he had failed to review information, failed to contact medical providers, and failed to make a complete review of the evidence. She said she could not fathom the reason why Attorney Kramer failed to serve as a neutral guardian ad litem whose interest is protecting children. She stated that all the facts proved that the Guardian ad Litem is more interested in protecting the interest of the father David Chandler rather than the wards.

Attorney Spencer described her statement in her letter to

Attorney Kramer of 10/26/05 that "we intend to hold you legally responsible" as a fact, not a threat. She stated under normal circumstances, the Guardian ad Litem is independent, but in this case he appeared to be working with David Chandler, against the children and she, Attorney Spencer, was doing all she could to protect the children. Attorney Spencer opined that the Clarke County Department of Human Services social worker did not do her job properly either. She even went so far as to say that she believed the Guardian ad Litem had inappropriate contact with the child. She admitted having given Dr. Girard copies of documents from this case "which concerned her as a grandparent" and did not believe giving copies of documents to Dr. Girard violated the gag order.

Attorney Karen Spencer described her own emotional involvement in this case in her testimony. She was exceedingly upset about a visit planned for Kayleigh and Michael with their mother which did not occur due to a miscommunication between DHS and Donna. DHS had notified Donna of the planned visitation by letter, but Donna had gone out of town and was unavailable to visit with the children and did not receive the letter before she left Quitman. Attorney Spencer testified that she lost sleep over her worry about the children and stayed at her office all hours to figure out what she could do to protect the children. She described herself as distraught and the situation has caused her incredible pain and anguish. She described the failed visitation as an amazingly cruel trick which caused grave emotional damage to Donna , Kayleigh, Michael and to Karen Spencer.

Attorney Spencer testified that the money paid her in connection with her representation of Donna Chandler has come from Sundra Girard. She charges $185.00 per

hour and she has spent scores o f hours on this case. She had no idea of the amount of money she had been paid, but admitted it was in excess of $50,000.00.

With regard to her failure to show up for the hearing she noticed for January 9, 2006, Attorney Spencer said she forgot, that she made a mistake and it was totally her fault and apologized to everyone. She did not believe it was appropriate for her to pay fees and costs to the other attorneys who showed up in court as a result of her notice.

Attorney Kramer testified about the difficulties and constraints he experienced in his performance of his duties as Guardian ad Litem. He needed to establish rapport with the children and could not get access to them in a timely manner. Contact with Donna Chandler and the children interfered with his ability to do his job. Kayleigh Chandler told him at least two times that he, Attorney Kramer, was not acting in her best interest. After Attorney Spencer became involved in the case, he received a constant barrage of paperwork, and communications from Attorney Spencer, Donna Chandler, and Sundra Girard which rose to a level of harassment in his opinion. Attorney Kramer stated that he had never been subjected to such false, misleading and repetitive communications in his career. No only was Attorney Kramer harassed, but the Department of Human services was harassed as well.

The barrage of paperwork forced him to send his letter to Attorney Spencer of September 28, 2005, in which he asked Attorney Spencer to engage in motion practice through the court rather than contacting him directly. Neither Attorney Kramer nor the DHS could see to other business because of having t o deal with the Chandler matter every day. The barrage of paperwork and

communication did not lessen after his letter of 9/28/2005.

The harassment continued in the form of a bar complaint filed by Sundra Girard against him which included confidential information from this sealed court file, the preliminary report of the Guardian ad Litem, Attorney Karen Spencer's Status Report and Motion for Change of Custody, the psychological evaluation performed by Dr. Jolly, copies of Tammy Henderson's report, records from the Collin County Child advocacy center, records from UMC and the Interim report of the Guardian ad Litem. The complaint was filed on December 18, 2005, after Donna Chandler had left the jurisdiction. The documents could have come only from Attorney Karen Spencer. He felt that the Bar Complaint was another effort to harass him while this case was pending and prior to the trial of the matter. This Bar Complaint galvanized him to pursue his complaint against Attorney Spencer, Donna Chandler, and Sundra Girard. In Attorney Kramer's opinion the gag order and statutory confidentiality requirement connected with this case prohibited Attorney Spencer from divulging information to Sundra Girard. In his opinion, sanctions are appropriate against Attorney Spencer.

On September 9, 2005, Attorney Karen Spencer subpoenaed the computer at Faith Church and spoke to Mrs. Chisolm, the Chancery Clerk with regard to a space in which to secure the computer. She told Walter Wells of faith Christian Church to deliver the computer to the office, then got a call from Mr. Wells reporting that Harold Brasfield said there was no hard drive on that computer.

Attorney Spencer filed the 9/12/05 motion in part due to the "computer incident". She filed the 9/30/05 Motion to

include Dr. Jolly's report. When she learned from Donna that Kayleigh wanted to commit suicide it concerned her greatly and she faxed a request for an emergency hearing to the Judge. Attorney Spencer stated that she was "out of her mind with concern for this child." Attorney Spencer drove to Quitman on September 16, 2005 to meet with Attorney Kramer to discuss the factual basis he had to make the claims of manipulation and brainwashing against Donna Chandler. She was frantic. She met with Professor Debbie Bell, Mark Chinn, William Wright, a Grand Jury expert. She did all she could do to move the case forward. And the experts she consulted did not criticize her for filing motions.

She did file a verbatim motion on 10/12/05 to the motion filed 9/27/05 because some of the exhibits were out of order and she was afraid the court would not be able to follow the motion because the exhibits were out of order. The amended motion was a housekeeping issue, and did not bring up anything new of a substantive nature.

On 10/17/05 she filed a motion to require the Gardian as Litem to file his report and to Return Custody to Donna Chandler. Attorney Spencer testified that before filing motions she read the court file, read documents provided to her, researched applicable law, considered alternatives, consulted with her client, experts Rebecca Watkins, rules, laws, constitutional laws, procedural rules, case law, and applied the law to the facts. She consulted with Bilbo Mitchell, the District Attorney, and a criminal law expert. She considered every single fact contained in the court file and everything her client told her. She spoke with Dan Powers, the Executive Director of the Collin County child Advocacy Center, and Rene Matthews, one of the counselors there.

Attorney Spencer filed her motion late Friday the 19th of

August 2005, and missed Attorney Parrish, so she called him at his home on Saturday, August 20th at around 12:30 or 1:00 to advise him that she would be representing Mrs. Chandler, had spoken to the Court Administrator Sue Franklin and had her emergency motion set for Monday morning. Attorney Spencer reported that Attorney Parish told her words t o the effect that "we are coming after Mrs. Chandler and if you represent her we'll be coming after you."

On the fifth day of the motion hearings, Attorney Spencer continued her testimony. She stated that she consulted with even more lawyers than she had previously testified about, including Attorney Robert McDuff on the constitutional issues. The issue of the dental treatment of the children very much frightened her and she consulted Attorney Wayne Drinkwater, who is representing three hundred plaintiffs against the DHS in Federal Court. Attorney Spencer learned that Kayleigh would be seeing Dr. Traxler in Quitman for the extraction of a baby tooth and she wrote a letter to Dr. Traxler, which is in evidence marked as Exhibit 31. Because of her concern that DHS might not be protecting the physical interest of Kayleigh and Michael, she considered associating another lawyer.

Attorney Spencer discussed the change that she made to the order prepared by Attorney Kramer after hearings held on November 7, 2005. She admitted making a change in paragraph three, changing " natural parents" to "mother" and initialed the change on the face of the order. Attorney Spencer denied that she made the change without notice to the other attorneys. She went on to state that Attorney Parrish intends to ruin her and asserted that he deliberately misled the court saying that she did something wrong.

Attorney Spencer stated that she attempted to resolve issues without court intervention and drafted a temporary order after the hearings of September 20, 2005. Exhibit 33 is her letter to Attorney Kramer proposing the settlement. She did not intend to exclude Attorney Parrish from the process she was offering the terms first to Attorney Kramer and then intended to send the offer to Attorney Parrish.

Attorney Spencer went on to say that she was driven by one motive: to protect her client and her interests. She stated that the conduct of Attorney Parrish affected her decision to file the motions which she filed. He refused to talk to her or work with her and prevented her from moving smoothly through the court. It took more time because no issues were agreed to, and she was forced to do everything the long way and the hard way.

Attorney Spencer cited the case of Lewis v. Butler, 974 so. 2d 1015 [sic] to support her contention that Donna Chandler was justified in not complying with the Court's order requiring visitation. The court reviewed this case, and it is not on point to the situation which existed in this civil action. The Lewis case involved non-compliance with a visitation order due to the mother's suspicions that the father had abused the children. The court found that the mother should not be held in contempt for violation of the visitation order because of her genuine concern for her children's safety. In this case visitation had been ordered after the allegations of sexual abuse had been made, and the Lewis case does not justify non – compliance with this Court's orders in the context in which they were entered.

Attorney Spencer stated that she believed she knew exactly what she was doing when she filed her motions and prepared for trial. She opined that she was competent

to represent Mrs. Chandler and conducted the independent investigation required in her representation of Donna Chandler. A lot of the information she relied on came from Donna, including the allegation that Kayleigh had made a "suicide threat" and that the Guardian ad Litem had set up a meeting with Kayleigh, himself and David Chandler for David to make an apology to Kayleigh.

When questioned about her alleged abuse of Rule 45 Subpoenas Duces Tecum, she stated that the court "amazingly" ordered her not to issue subpoenas.

Attorney Spencer testified that her first courtroom appearance was on August 22, 2005, and that at the time Attorney Joe Kieronski was Donna's attorney of record.

Attorney Spencer filed her Second Amended Motion to Return Children to Mother on 10/12/05. It was identical to the motion filed on 9/27/05 with the exception that the exhibits were in proper order. She stated that she could not recall whether she sent a cover letter explaining that it was the same motion, but opined that an attorney could easily determine that it was the same motion.

When questioned about her Motion to Require the Guardian ad Litem To File Report Returning Custody to Donna Chandler, Attorney Spencer stated that it was proper to ask the Court to order the Guardian ad Litem to make a specific finding.

When questioned about the Bar Complaint filed against Attorney Kramer by Sundra Girard, she stated that she did not know that Dr. Girard was going to file that complaint.

On 12/13/05, in response to a subpoena for Donna Chandler's computer, Attorney Spencer filed a statement

that "Donna does not own a computer; subpoena is too broad." (Exhibit 35.) In court on September 20, 2005, Attorney Spencer asked her client Donna Chandler about her computer and stated that it was fine for anyone to look at Donna's computer.

When questioned by Attorney Kramer, Attorney Spencer admitted that she wanted the District Attorney to indict Mr. Chandler because of her belief that he has sexually assaulted Kayleigh Chandler and finds it reprehensible that a man would harm his own child by raping her. She has spoken to District Attorney Bilbo Mitchell and tried to reach Assistant District Attorney Lisa Howell.

Attorney Spencer testified that she had filed six motions, plus two "housekeeping" motions. These filings did not include other notices , subpoenas, documents, letters, and faxes. She admitted sending numerous letters and numerous copies of court filings by fax. Despite receiving a letter from Attorney Kramer requesting that she stop, she did not stop.

Attorney Spencer stated that she did not consider her 11/5/05 letter to Dr. Traxler to be an interference with DHS custody of the minor children.

Exhibit 32 is a copy of an e-mail Attorney Spencer sent to Donna Chandler, with a copy to Sundra Girard with attachments which are confidential and covered by the Court's gag order. Attorney Spencer stated that Sundra Girard is not a third party. She admitted sending confidential documents to Sundra Girard and stated that she did not believe that her actions were in contravention of the Court's orders.

Attorney Spencer testified on redirect concerning the personal cost that she has been put to because of the motions for sanctions against her. She charges her time at

$185.00 per hour and had to appear in court February 3, 6, 7, 8, and 9 defending the motions. She also had to hire Attorney Speetjens who is charging her $200.00 per hour. She stated that Attorney Kramer and Attorney Parrish were acting in their own personal interest, not in the interest of the children, not in the interest of David Chandler, and that it was costing tens of thousands of dollars, costing her incredible sums, causing her incredible pain and anguish, that she had not slept in three to four days, and that she had suffered "amazingly." She went on to say that she suffered from a headache for days, and she was justifiably concerned about the attack on her integrity and her professional ability. She added that she will need medical attention.

Attorney Parrish testified about the damages suffered by his client due to the alleged misconduct on Attorney Spencer's and her client's part. Prior to the commencement of the hearing on February 3, 2006, Attorney Parrish's legal fees charged to Mr. Chandler at $150.00 per hour were in the sum of $11,861.36. He spent an additional sixty-eight hours through the fifth day of the hearings, and testified that the majority of the expense was incurred after July 2005 when Attorney Spencer entered the case.

DISCUSSION OF THE APPLICABLE LAW

The Litigation Accountability Act is found in the Mississippi Code at Section 11- 55-1, et seq. The definitions are set out in Section 11-55-3. Subsection 5(a) provides as follows: "Without substantial justification , when used with reference to any action, claim, defense or appeal, including without limitation any motion, means that it is frivolous, groundless in fact or law, or vexatious, as determined by the court ."

The Litigation Accountability Act allows for the award of attorney fees and costs against an attorney or a party in Section 11-55-5 as follows: (1). . . the court shall award, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorney's fees and costs against any party or attorney if the court , upon the motion of any party or on its own motion, finds that an attorney or party brought an action, or asserted any claim or defense, that is without substantial justification, or that the action , or any claim or defense, that is without substantial justification, or that the action , or any claim or defense asserted, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceedings by other improper conduct including, but not limited to, abuse of discovery procedures available under the Mississippi Rules of Civil Procedure." Subsection (3) provides that "when a court determines reasonable attorney's fees or costs should be assessed, it shall assess the payment against the offending attorneys or parties, or both, and in its discretion may allocate the payment among them, as it determines most just, and may assess the full amount or any portion to any offending attorney or party." Subsection (4) requires that before the assessment of fees should be ordered unless the court finds that the party clearly knew or reasonably should have known that such party's action, claim or defense or any part of it was without substantial justification. Section 11-55-7 sets out factors to be considered by the court in assessing the amount of attorney's fees and costs.

Throughout the pendency of this civil action, Attorney Spencer has faxed voluminous pleadings and other documents in advance of filing the originals, and the court file swelled to dramatic proportions. Among the documents filed by Attorney Spencer are the following:

1. Motion to Intervene and/or Modification and/or Modification and/or for Reconsideration of Order Sua Sponte, filed by fax 8/19/05 and the original filed 8/22/05. Confidential records of the minor child were attached to the original filing.

2. Motion for Emergency/Expedited Hearing on Motion to Intervene and/or Modification and/or for Modification and/or Clarification of Order Sua Sponte, sent by fax on Saturday, August 20, 2005, with the original filed on August 22, 2005.

3. Faxed letter to Attorney Parrish on Saturday, September 3, 2005, with copies faxed to Attorney Kramer, the Chancery Clerk, and Judge Springer. Confidential records of the minor child were attached .

4. Answer to Amended Petition for Modification, Motion t o Dismiss and Amended Counterclaim. This pleading was not faxed first.

5. Status Report and Motion for Change in Custody was filed first by fax on 9/9/05 and then the original filed September 12, 2005. Confidential records of the minor child were attached to the original filing (not included in the fax.)

6. Response in Support of Subpoena Duces Tecum was filed on September 12, 2005. Confidentiil records of the minor chi1d were attached.

7. Second Motion to Return Custody to Mother, filed September 27, 2005. Confidential records of the minor child were attached.

8. Motion for Emergency/Expedited Hearing on Motion t o Return Custody to Mother, filed September 30, 2005.

9. Amended (Second) Motion to Return Custody to

Mother was filed October 12, 2005. Confidential records of the minor child were attached.

10. Motion for Order Scheduling the Trial of All Pending Issues was filed first by fax on October 18, 2005, and then by mail on October 19, 2005.

11. Motion to Require Guardian Ad Litem to File Report Returning Custody to Donna M. Chandler was filed October 19, 2005.

12. Motion for Contempt, filed by fax on November 7, 2005 and by mail November 8, 2005.

13. Motion to Lift Gag Order, filed December 1, 2005.

14. Notice to take deposition of the Guardian ad Litem was filed December 1, 2005. Attorney Spencer signed the notice as Attorney for "Donna Chandler and Sundra Girard."

15. Motion to Correct Factual Errors or Omissions in Record filed January 17, 2006.

16. Motion to Withdraw as Attorney of Record was filed January 17, 2006.

17. Response to Motion for Sanctions and Counter Motion for Sanctions filed on February 2, 2006.

18. Response to Motion to Strike Defenses and Counter Complaint filed February 2, 2006.

19. Also on February 2, 2006, Counter Motion to Disqualify and Remove Guardian ad Litem.

20. Motion to Lift Gag Order for Specific Purpose was filed February 13, 2006.

21. Motion to Lift Gag Order filed February 13, 2006.

22. On February 22, 2006, Response to Motion to Find

Attorney Karen Spencer in Contempt.

The filings made by Attorney Spencer were certainly voluminous. She attached the confidential records of the minor child Kayleigh Chandler six times. It was not necessary for her to attach these records on any occasion, and it appears that she attached the records to the filings, including a letter copied to Judge Springer, with the intention of having the Court review documents which were not admitted into evidence in advance of the trial or any pre-trial hearings.

Rule 11 has been invoked in the motions pending before the Court. In pertinent part, the rule provides as follows:

RULE 11. SIGNING OF PLEADINGS AND MOTIONS

Signature Required. . . .The signature of an attorney constitutes a certificate that the attorney has read the pleading or motion; that to the best of the attorney's knowledge, information and belief there is good ground to support it; and that it is not interposed for

delay. . . .

Sanctions. . . .For wilful [sic] violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted. If any party files a motion or pleading which, in the opinion of the court, is frivolous or is filed for the purpose of harassment or delay, the court may order such a party, or his attorney, or both, to pay to the opposing party or parties the reasonable expenses incurred by such other parties and by their attorneys, including reasonable attorneys' fees.

By signing these documents and filing them in the court file, Attorney Spencer vouched for the content of the documents.

The first motion filed by Attorney Spencer changed the tone of this case. It was filed in a flurry on a Friday afternoon, and Attorney Spencer was accommodated by the Court, the Guardian ad Litem, Edward N. Kramer, the attorney for Donna Chandler at the time, Joseph A. Kieronski, and by the attorney for David Chandler, Attorney Stewart Parrish, when all appeared at the hearing hastily set for that Monday morning.

In her testimony, Attorney Spencer stated under oath that she advised Donna Chandler not to comply with the Court's Order Sua Sponte entered on August 16, 2005. In the body of the Motion, Attorney Spencer set out that "the Motion is filed to temporarily suspend the operation of the August Order." Attorney Spencer stated that pursuant to MRCP Rule 59, her motion stayed the effectiveness of the Court's Order of August 16, 2005.

A review of Rule 59 reveals that there is no such stay effected by such a Motion. Her advice to her client Donna Chandler was erroneous, and that advice caused Donna Chandler to disregard the Court's order which required her to deliver the minor children to Attorney Kramer's office at 3:00 p.m. on Friday, August 19, 2005. Attorney Kramer and DHS worker Brunette Jones were there to receive the children and had no notice that Donna Chandler would not be complying with the order to deliver the children at the specified time.

The record is clear that Donna Chandler was uncooperative with the Court in making the children available to the Guardian ad Litem prior to Attorney Spencer's entrance into the case. There were problems with the 2005 spring break visitation which in the Court's opinion were caused by Donna Chandler and Sundra Girard, not by any adverse action on the part of David Chandler.

The Court ordered supervised visitation for David Chandler in July 2005 and required Donna Chandler to bring the children to Mississippi from Texas to facilitate the visitation and to afford the Guardian ad Litem an opportunity to meet with the minor children Kayleigh and Michael. Instead of complying with this order, Donna Chandler filed the Texas ex parte proceeding.

The Guardian ad Litem could not properly serve this court and fulfill his duties under those circumstances, and the Court found that the only recourse was to enter the Sua Sponte Order requiring Donna Chandler to surrender the children to the custody of the Clarke County Department of Human Services. Donna Chandler made the allegations which required the appointment of a Guardian ad Litem and the case could not proceed at all without the report of the Guardian which could not be had without his having access to the children.

Attorney Spencer filed requests for the children to be returned to the custody of her client through five different motions filed from August 19, 2005 through October 19, 2005.

Hurricane Katrina caused problems in having the childen psychologically evaluated and also caused damage to the Guardian ad Litem's office in Quitman, and inevitably a delay was experienced in the completion of the required report. Attorney Spencer and her client did not stop in their full court press to regain custody of the minor children. Attorney Spencer sent out an enormous quantity of correspondence which the Guardian ad Litem labeled a "barrage." These letters came by fax and by mail. There were telephone calls. The Guardian ad Litem testified that he felt harassed, as did the Clarke County DHS Social Worker, Brunette Jones. Attorney Kramer also was threatened, and Attorney Spencer

testified that she considered filing lawsuits against Attorney Kramer in circuit court and asserted that the Guardian ad Litem intentionally inflicted emotional distress upon the minor children, their mother, and on Attorney Spencer herself.

After the initial appearance by Attorney Spencer on August 22, 2005, and the Court's denial of her motion to reconsider the placement of the children with the DHS, Attorney Spencer filed a renewed request to return the children to Donna Chandler's custody in her "Status Report and Motion for Change in Custody" filed September 12, 2005. The case had been set for trial on September 20, but due to the hurricane and related problems, the Guardian ad Litem was not prepared to go forward. Attorney Spencer attempted to have her Motion for Change in Custody heard on September 20, and made a long proffer of the evidence which she proposed t o present. The proffer showed that to go into the Motion would be tantamount to having the trial on the merits, and the trial on the merits could not be had until the Guardian ad Litem was prepared to proceed.

Despite this ruling about her motion, and despite the necessity that the Guardian ad Litem be prepared to proceed before the Court could consider the motion, Attorney Spencer filed a second Motion to Return Custody to the Mother a week later on September 27, 2005, and requested that the Court expedite the hearing. She filed an Amended (Second) Motion to Return Custody to Mother on October 12, 2005. Although she testified this was a "housekeeping" motion because the exhibits were out of order, she failed to inform the other attorneys of this. The other attorneys therefore had to treat the motion as the filing of new matter and this required additional time and effort on their part.

The exhibits should not have been attached to these motions in the first place. The same exhibits (with the exception of the transcript of the proceedings on September 20, 2005) were already in the court file in the Motion to Intervene filed August 19, 2005, the letter in the court file dated September 3, 2005, the Status Report and Motion for Change in Custody filed September 12, 2005, and the Response in Support of Subpoena Duces Tecum filed September 12, 2005. With the second Motion to Return Custody to Mother filed September 27, 2005 and the Amended (Second) Motion to Return Custody to Mother filed October 12, 2005, all of the same exhibits were filed again and the September 20 transcript was filed with each motion. This is a tremendous amount of material and should have been produced outside the court file in the context of discovery, and should not have been attached to the motions again and again.

Exhibit 11 is a letter dated September 26, 2005 from Attorney Spencer to Attorney Parrish, copied by fax to Attorney Kramer. This letter sets out Attorney Spencer's view of the work of the Guardian ad Litem on this case. She states that there is "no doubt that David Chandler sexually assaulted Kayleigh Chandler and requests that David dismiss his Petition for Modification "immediately". She closes the letter by stating "If David Chandler does not dismiss his Petition, Donna Chandler will be forced to take all necessary steps to protect her children. This statement is prophetic, considering Donna's leaving the jurisdiction with the children as soon as she received their physical custody.

Exhibit 15 is Attorney Kramer's polite request in a letter dated September 28, 2005 to Attorney Spencer that she stop inundating him with the "constant blizzard of

paperwork" which "serves no purpose other than to make a record of your objections, while disrupting my investigation." He informed Attorney Spencer that her frequent demands on him only detracted from his effectiveness in handling the case. This letter was not effective to stop Attorney Spencer's application of pressure to the DHS and the Guardian ad Litem, and her filings and faxing and correspondence continued unabated.

Attorney Spencer's treatment of the Guardian ad Litem did impede his progress. The almost daily intrusion by Attorney Spencer into Attorney Kramer's workday and the workday of the DHS created an extremely hostile and pressure- filled environment for the DHS and for Attorney Kramer.

The Guardian ad Litem plays an essential role in a case such as this where there has been an allegation of sexual abuse. There were two possible outcomes that had to be fully explored: (1) The father had sexually abused the child or (2) the mother had manipulated the child to allege that the father had sexually abused her. The Guardian must be allowed time to perform his duties, and should not be forced to operate in an environment such as what was created by Attorney Spencer.

The importance of the Guardian ad Litem is discussed by our Supreme Court in the case of Copiah County Department of Human Services v. Linda D., 658 So. 2d 1378, a t 1383, as follows: " . . . the guardian ad litem 'investigates, makes recommendations to a court, or enters reports,' and holds paramount the child's best interest . [citing Short v. Short, 730 F. Supp. 1037, 1038 (D. Colo. 1990) The court in Copiah goes on to quote Shainwald v. Shainwald, 302 S.C. 453, 458, 395 S.E.2d 441, 444 (C t . App. 1990) as follows: "A guardian ad

litem is a representative of the court appointed to assist it in properly protecting the interests of an incompetent person. Children are best served by the presence of a vigorous advocate free to investigate, consult with them at length, marshal evidence, and to subpoena and cross-examine witnesses. Judges should also be mindful of the fact that a guardian ad litem is not in the true sense an adversary party and the court has a duty to insure that guardians ad litem perform their duties properly and in the best interest of their wards. The trial judge's duty to assure the child's best interests are protected requires as a minimum that (1) he select a competent person to serve as guardian ad litem; (2) he select a person wit h no adverse interest to the minor; and (3) the person so selected is adequately instructed on the proper performance of his duties.

RBS vs. TMS, 765 So. 2d 616 (Miss. Ct. App. 2000) is another case which discusses the importance of the Guardian ad Litem in a case where sexual abuse is alleged. At 620, the Court stated: "A guardian ad litem for a minor child is an advocate for the child alone, presumably uninfluenced by the litigating position of either parent since, in some cases, a parent may take a position that, when viewed objectively, actually appears not to be in the child's best interest. [citing cases] 'A guardian ad litem should be . . . ' . . .unbiased and independent ... to insure protection for the child's best interests.' That is an important role, but that role is fulfilled when the guardian vigorously advances a position that the guardian believes to be in the child's best interest. However there is not, nor ought there to be, any presumption of correctness attached to the litigating position taken by a guardian ad litem. The view of the guardian and the reasoning behind that view are nothing more than additional information to aid the chancellor in

making the decision on the merits of the matter in dispute a matter that ultimately lies with the chancellor and which cannot be delegated by the appointment of a guardian ad litem." [citing authority.]

The proper forum to question the Guardian's recommendations to the court would be in the context of the trial where all of the evidence can be examined. Attorney Spencer's actions created an environment in which it was extraordinarily difficult for the Guardian ad Litem to fulfill his role in the way intended by the case law.

From the beginning of her representation of Donna Chandler in this civil action, Attorney Spencer disagreed with the reports of the guardian. She instructed him not to meet with Kayleigh Chandler alone because he was a man and a man had assaulted Kayleigh. She threatened to hold him personally liable for any adverse effect that might be had on the children. She demanded to see his file. She subpoenaed him for a deposition. She championed herself as the one with the role to protect the children but she did not come into that role in a fair and impartial manner as had Attorney Kramer. Attorney Spencer was completely and utterly convinced that David Chandler had sexually abused his child and if the Guardian ad Li tem contemplated any other possibility, she asserted that he was not doing his job.

Exhibit 10 is a letter from Attorney Spencer to Attorney Parrish with no copy sent to Attorney Kramer, dated October 25, 2005, informing Attorney Parrish that Attorney Kramer was arranging for "an apology" from David Chandler to Kayleigh Chandler. Attorney Kramer and social worker Jones testified that no such meeting was contemplated nor arranged. The tone of Attorney Spencer's posture in this case is displayed in this letter

when she states "Thus, Attorney Kramer believes that David Chandler sexually assaulted Kayleigh. Considering this fact and the irrefutable documentary evidence which has been attached to recent motions filed in this matter. . . . "Attorney Spencer requests that Attorney Parrish dismiss his motions against her client based on this statement, and goes on to ask him to join in her motions "so that pressure can be brought to bear on Attorney Kramer to return custody of Kayleigh and Michael to their mother."

Attorney Spencer in her representation of Donna Chandler never contemplated that there was any other possibility in the case than that her client was absolutely correct on all of the allegations made against David Chandler. She appeared at all times to be personally invested in the outcome of this case, and could envision no outcome other than this court's finding that David Chandler had sexually assaulted his daughter and that he should be indicted by the Grand Jury and convicted for his crimes. Every time she appeared in court, Attorney Spencer went through a litany of what she deemed to be the "irrefutable evidence" against David Chandler.

Attorney Spencer filed a Motion for Sanctions against Attorney Parrish and the Court found that although Attorney Parrish had been rude to Attorney Spencer, his conduct did not rise to the level that sanctions were appropriate. The Court did state that it would consider whether or not Attorney Parrish's conduct should mitigate any damages the Court might find appropriate if sanctions were levied against Attorney Spencer. Considering the immovable position of Attorney Spencer with regard to her firm beliefs expressed vehemently again and again, the number of motions she filed, the quantity and quality of the faxes and letters she sent, it is

not surprising that Attorney Parrish reacted to her the way he did. Therefore, Attorney Parrish's conduct should not mitigate in any way the damages this Court should award.

This Court has been asked to sanction Attorney Spencer pursuant t o the Litigation Accountability Act, Mississippi Code Ann. Section 11-55-1 et seq and pursuant to Rule 11, Mississippi Rules of Civil Procedure. A review of the facts and procedural history of this case make it clear that Attorney Spencer is liable for sanctions pursuant to the Act and the Rule. Her conduct toward the Guardian ad Litem was harassing and threatening and vexatious and interfered with his ability t o serve the Court in the capacity to which he was appointed. The Guardian's services were required by law due to the allegations made by her client, and Attorney Spencer's actions impeded his progress.

Attorney Spencer's first attempt to have custody restored to Donna Chandler was her filing of the Motion to Intervene and/or Modification and/or for Reconsideration of the Order Sua Sponte filed August 22, 2005. On September 20, Attorney Spencer again brought up the issue through her status Report and Motion for Change of Custody. The Court ruled at that time that to conduct a hearing on that motion would be tantamount to having the trial on the merits and the trial on the merits could not be had until the Guardian ad Litem was prepared, and he was not prepared. Despite this clear ruling, Attorney Spencer filed similar motions to her previous motions on September 27, 2005, and on October 12, 2005. Although she stated that the October 12, 2005 filing was "housekeeping" due to the mis-ordering of exhibits, she did not inform the attorneys involved in the case that this filing was a replacement for the September 27 filing, and

they justifiably spent time reviewing the new motion.

Considering the clear ruling from the Court that the motion to return custody to mother could not be heard until the Guardian ad Litem was prepared to proceed, it was unnecessary for the two subsequent motions to be filed.

Considered in the context of the constant faxing and mailing of pleadings and letters, the two subsequent motions on the same subject matter of the first motion should be considered harassment. It should also be noted the number of times Kayleigh's confidential medical records were attached to filings made by Attorney Spencer. As the Court stated earlier, it would have been appropriate to share the information with the other attorneys without filing it in the court file, and it appears that attaching these records to the pleadings was an attempt to have the court review information that had not been admitted into evidence.

The confidential records were attached unnecessarily, and they were filed in the court file six times. An attorney can be sanctioned pursuant to Rule 11 if "scandalous or indecent matter" is inserted into a pleading or motion. Attorney Spencer not only was filing the confidential records in the court file, but at the same time she was attempting to lift the gag order from the proceedings and she did opine that the confidentiality provisions of Section 43-21-151(1)(c) should not apply to this Chancery Court action.

Confidential medical, psychological and counseling records of a minor child who is alleged to be sexually abused certainly contain information which is scandalous, especially when it is considered that the father has been accused of abuse on the minor child. The

documents should have been produced in discovery and should have been presented in court, following evidentiary rules, so that the court could properly review them in the conduct of the trial, if that information was introduced into evidence. Filing the documents the first time may have been arguably appropriate, but they were filed six times. Sanctions for this conduct on the part of Attorney Spencer should be considered.

Sanctions against attorneys have been upheld by the Supreme Court of Mississippi. Tricon Metals & Services, Inc. v. Topp, 537 So. 2d 1331 (Miss. 1989) in which the Court upheld Rule 11 sanctions. At page 1334, the Court stated "There can be no doubt of the authority of our trial courts to assess reasonable attorneys fees when in the opinion of the court a motion or pleading is "frivolous". At page 1335, in discussing the language of Rule 11, the Court states: "in each instance the rule's language identifies a triggering event as requisite to the authority to sanction. in each instance that triggering event is litigation conduct by a party and/or his attorney. ... Our courts have authority to act sua sponte under Rule 11 and ought to exercise that authority against the backdrop of their inherent authority to impose sanctions upon those who abuse the judicial process. [citing cases] ."

The Tricon court goes on to discuss the nature of a frivolous pleading, at page 1335: "More substantively, a pleading or motion is frivolous within the meaning of Rule 11 only when, objectively speaking, the pleader or movant has no hope of success. Frivolous filings impose substantial and unnecessary costs upon both litigants and the courts, and ultimately upon the public. Rule 11 must be read and interpreted in light of the purpose implicit in it: one of general deterrence of frivolous filings. Common sense informs us that we may not eliminate the

frivolous filing nor its costs. The goal of Rule 11 enforcement is to holding the social cost of frivolous flings [sic] to an optimally efficient level."

Certainly Attorney Spencer's Motions t o Return Custody to Mother were filed with hope of success. The issue before the Court boiled down to two possibilities: either the father abused the child or the mother manipulated the child to accuse the father of the abuse. The children were taken from the custody of their mother because she refused to cooperate with the Court so that the Guardian ad Litem could have access to the children and could fulfill his duties to the court. Also, the Guardian feared that the child was being manipulated by her mother, and the children needed to be in a neutral environment to be away from the possibility of manipulation so that the Guardian ad Litem could conduct his investigation and report his findings to the court on the two possible scenarios.

After the court informed Attorney Spencer on September 20th that to hear her motion would be akin to having a trial on the merits and that the Guardian needed time to complete his report, Attorney Spencer should have refrained from filing additional similar motions, along with all of her other filings, faxes, and letters. So although her motions were filed with hope of success, they impeded the progress of the Guardian ad Litem's investigation and caused all concerned to devote more time to the litigation, and in the case of Attorney Kramer and Attorney Parrish, incur more attorneys' fees which were not being paid. In effect, the motions constituted harassment and caused Attorney Kramer and Attorney Parrish to spend additional time on the case which should not have been necessary. The motions caused vexation and delay and constituted harassment. In addition to the

three motions with the subject matter of restoring to Donna Chandler the custody of her children Attorney Spencer also filed a Motion to Require Guardian ad Litem to File Report Returning custody to Donna M. Chandler. There was already enormous pressure on the Guardian to conclude his report, and this motion was unnecessary and in the context of all of the other filings, faxings and letters, this motion constituted additional harassment and caused vexation and the incurring of additional attorney fees. The Motion also requested that the court order Attorney Kramer to issue a report favorable to Donna Chandler. It would have been inappropriate for the court to grant such relief , and the motion itself was totally unnecessary. Attorney Spencer filed a Motion to Lift Gag Order on December 1, 2005, a Motion to Lift Gag Order for Specific Purpose on February 13, 2006, and a Motion to Lift Gag Order on February 13, 2006. The court did instruct Attorney Spencer that it would consider specific requests with regard to the gag order, so the Motion to Lift Gag Order for Specific Purpose could not be considered frivolous. The other two Motions could not have hope of success due to the provisions of law, specifically Miss. Code Ann. 43-21-151(1) (c). Attorney Spencer was insistent that the gag order be lifted so that she could insure that David Chandler was prosecuted for the crime of sexual assault of his child. Despite the fact that she was filing these motions to lift the gag order, she was not complying with the gag order by her own admission since she was giving confidential information from this case routinely to her third party client, Sundra Girard. The two motions to lift the gag order generally were frivolous because the law prohibits information t o be disseminated. Attorney Spencer 's disagreement with the provisions of law should not have given her hope of

success on these motions. Additionally, the motions required the attention of the other attorneys in the case and caused them to be harassed and vexed.

Attorney Spencer's Motion to Disqualify and Remove Guardian ad Litem filed February 2, 2006, constituted additional harassment of the Guardian ad Litem by her. His findings were contrary to what she believed, but that did not mean that he was not doing the job required of him by law. It did take time for him to properly conduct his investigation, but the issues were complex and the volume of paperwork thrust upon him by Attorney Spencer delayed his progress in completing his work. This motion, in addition to being vexatious and harassing, was filed on the first day scheduled for the trial, and after Attorney Spencer's client had absconded from the jurisdiction with the minor children there could be no hope of success on this motion, and it was without a doubt frivolous.

The Litigation Accountability Act sets out factors for the Court to consider in awarding costs and attorney's fees in Section 11-55-7. The review of the conduct of this litigation by this Court makes it clear that Attorney Spencer should be held liable for sanctions pursuant to MRCP Rule 11 and the Litigation Accountability Act. In considering the factors to be considered, this Court makes the following findings:

Attorney Spencer made considerable effort to determine the validity of her client's claims, but she failed to consider that there might be another version of the truth. Her zealous representation of her client's interests was taken to such an extent that she caused others involved in the litigation to be harassed and threatened.

Attorney Spencer did not attempt to reduce the number

of claims; she asserted the same claims over and over to the point of harassing the other attorneys involved in the litigation.

Facts were readily available. Attorney Spencer's filings, faxes, and letters impeded the development of the facts by the Guardian ad Litem and contributed to delays and difficulties in the litigation.

Attorney Spencer certainly had a valid purpose to pursue in her representation of Donna Chandler, but the way that she presented her client's claims constituted harassment.

There were contested issues of fact which would have been determinative of Attorney Spencer's client's claims, but her conduct of the litigation did not contemplate even the existence of such a possibility.

Attorney Spencer did not prevail in this case. The Court did not allow her to withdraw from her representation of Donna Chandler after Mrs. Chandler absconded from this Court's jurisdiction. Attorney Spencer was present through the trial on the merits, but did not present evidence in that trial except by proffer.

Attorney Spencer asserted that the confidentiality of this civil action was unlawful and violative of her client's constitutional rights. She asserted that Section 43-21-151(1)(c) had no applicability to this Chancery Court action, although it clearly does. Attorney Spencer was not trying to establish a new theory of law: she was not complying with the clear provisions of the law and she was violating this Court's specific orders that confidentiality be maintained.

Attorney Spencer did draft an agreed judgement [sic] in an attempt to restore custody of the children to her client prior to the recommendations of the Guardian ad Litem

in that regard, but her conduct toward the other attorneys and her unflinching stance on her client's version of the facts made any such attempt absolutely futile.

Attorney Spencer attempted to have the grandmother of the minor children, Sundra Girard, joined as a party. The law is clear that grandparents do not have rights pertaining to their grandchildren absent proof of an established relationship with the grandchildren beneficial to the children, and that the established relationship is interrupted due to some impediment such as the death of the grandparent's child through whom that grandparent had established that relationship. Considering that there was absolutely no impediment to Sundra Girard's relationship with the minor children due to her close relationship with her daughter Donna Chandler, it should have been clear to Attorney Spencer that Sundra Girard did not have a right to intervene in the litigation between her daughter and former son-in-law with regard to the allegations made by Donna against David. Also, it is clear from the evidence before the Court that Sundra Girard was and is Donna's right hand in the effort to permanently deprive David Chandler of his parental rights to Kayleigh and Michael. Sundra Girard was not a proper party to this litigation, was denied the right to intervene, and yet Attorney Spencer continued to treat Dr. Girard as a party litigant in this case and in the process violated 43-21-151(I)(c) and this Court's orders requiring confidentiality.

Attorney Spencer did not make any effort to reduce the involvement of the non-party, Sundra Girard.

Attorney Spencer harassed the other attorneys in this case with her filings, as discussed supra.

Attorney Spencer is guilty of filing frivolous motions.

She is guilty of harassing the other attorneys in the case with her faxes, filings, and letters. She is guilty of including scandalous material again and again as attachments to her pleadings. She is guilty of unnecessarily faxing voluminous documents in advance of mailing them. Her conduct was extraordinarily vexatious, and it impeded the work of the guardian ad Litem. She acted as if the Guardian ad Litem was an adverse party rather than an impartial fact-finder appointed by the Court to represent the interest of the children, and even subpoenaed him for a deposition. Her threats to the Guardian ad Litem and the attorney for David Chandler were inappropriate, and sadly prophetic of what occurred in this case: Donna Chandler helped herself to the justice she sought by absconding with the children as soon as she was restored their physical custody. The very first action on the part of Attorney Spencer in her representation of Donna Chandler was to instruct her not to comply with a court order. Attorney Spencer altered a judgment after being approved by other attorneys and before it was presented to the court. Attorney Spencer drafted the December 5, 2006 judgment which omitted legal custody in the DHS and restored physical custody to Donna Chandler. Attorney Spencer met with Donna Chandler for a considerable period of time prior to her leaving the jurisdiction with the children. Although there is no direct proof that Attorney Spencer played a role in a conspiracy with Donna Chandler and Sundra Girard, and although Attorney Spencer denies any complicity, the circumstances are suspicious.

In view of all of the foregoing discussion, it is clear that this Court has no alternative but to sanction Attorney Spencer for her conduct in this litigation. She has been paid in excess of $50,000.00 by Sundra Girard. The

Guardian ad Litem has had very little compensation, and it is likely that Attorney Parrish has had very little compensation, especially considering the fact that David Chandler was fired from his job after information from this litigation was disseminated to his employer.

As a penalty for her conduct in this litigation, Attorney Spencer shall pay to Attorney Edward N. "Nick" Kramer for his services as Guardian ad Litem in this case the sum of $25,000.00. As a further penalty for her conduct in this litigation, Attorney Spencer shall pay to Attorney Stewart Parrish the sum of $25,000.00 for the attorney fees incurred by his client in this litigation.

A judgment should be and is hereby entered against Attorney Karen H. Spencer in favor of Attorney Edward N. "Nick" Kramer in the sum of $25,000.00. Interest at the rate of five per cent per annum shall accrue on this judgment from this date, and the process and execution of this Court shall issue for the enforcement and collection of this judgment. A judgment should be and is hereby entered against Attorney Karen H. Spencer in favor of Attorney Stewart Parrish in the sum o f $25,000.00. Interest at the rate of five percent per annum shall accrue on this judgment, and the process and execution of this Court shall issue for the enforcement and collection of this judgment.

Attorneys Kramer and Parrish have gone without compensation while Attorney Spencer has been compensated handsomely by Sundra Girard. In view of all of the activity in this civil action on the appellate level, it is obvious that Sundra Girard is continuing to fund this litigation. Donna Chandler is no longer here to drive the litigation, and it is apparent that Sundra Girard has been the driving force throughout, as she is the one who has been paying the bills. The fees of Attorneys

Kramer and Parrish are continuing to accrue, uncompensated. It is reasonable in these circumstances to require Attorney Spencer to pay the attorneys' fees ordered within a certain amount of time. Attorney Spencer shall pay $25,000.00 to Attorney Kramer no later than May 19, 2006 and she shall pay $25,000.00 to Attorney Parrish no later than May 19, 2006.

CONTEMPT OF COURT

This Court has also been asked to hold Attorney Spencer in contempt of this Court. There are numerous instances when Attorney Spencer has been shown to be in contempt of this Court, and this Court should punish such contempt. The Court routinely punishes contempt of litigants who fail to comply with court orders. Certainly an officer of the court with a license to practice law should be held even more accountable when she violates court orders and the law.

Miss.Code Ann Section 9-1-17 sets out this Court's contempt powers, in pertinent part, as follows: "The Supreme, circuit, chancery and county courts and the Court of Appeals shall have power to fine and imprison any person guilty of contempt of the court while sitting, but the fine shall not exceed One Hundred Dollars ($100.00) for each offense, nor shall the imprisonment continue longer than thirty (30) days.

Miss. Code Ann. § 43-21-153 sets out the power of the youth court with regard to contempt, as follows:

"(1) The youth court shall have full power and authority to issue all writs and processes including in junctions necessary to the exercise of jurisdiction and to carrying out the purpose of this chapter.

(2) Any person who wilfully [sic] violates, neglects or

refuses to obey, perform or comply with any order of the youth court shall be in contempt of court and punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment."

FAILURE TO APPEAR

The first incident of contempt that the Court will discuss is Attorney Spencer's failure to appear on January 9, 2006. She filed a notice on December 13, 2005 that all pending motions would be brought on for hearing at 10:00 a.m. on Monday, January 9, 2006. Attorney Spencer did call the court clerk and request that the Chandler matter be taken off the docket, but she failed to notify Attorney Kramer and Attorney Parrish who did appear at the appointed time. Attorney Spencer stated that it was a mistake and inadvertent, but in view of the context of all of the litigation conduct on her part, this Court should not excuse Attorney Spencer for her failure to appear.

Uniform Chancery Court Rule1.05 sets out the requirement that an attorney be present in court, as follows: "when any civil action has been set for, or adjourned to, a particular day or hour, all officers, parties, witnesses and solicitors whose presence is necessary for the trial shall be present promptly at the time set. Any negligent or willful failure to obey this rule shall be punished by contempt."

Attorney Spencer herself caused this case to be set for January 9th. She caused two other attorneys to be present while she was absent, and the court and the court staff were also available due to the setting made on the court's docket. Attorney Karen H. Spencer should be and is hereby found to be in contempt of this court for her

failure to appear at the date and time set by her own Notice of Hearing, and on that finding of contempt, she shall be incarcerated in the Clarke County Jail for a period of twenty-four hours, and she shall pay a fine to the Chancery Clerk of Clarke County in the sum of $100.00 which shall be paid by the 1st day of May, 2006. The incarceration shall be suspended on the condition that the fine is timely paid. Should Attorney Spencer fail to pay the $100.00 fine to the Chancery Clerk by 5:00 p.m. on May 1, 2006, she shall report for incarceration for twenty-four hours a t 6:00 p.m. on May 1, 2006, and the Sheriff shall release her upon her payment of $100.00 or the expiration of twenty-four hours, whichever shall first occur.

VIOLATION OF § 43-21-151(1)(c) AND

THIS COURT'S CONFIDENTIALITY ORDER

The provisions of § 43-21-153 are applicable to violations of § 43-21-151(l)(c). Attorney Karen Spencer continuously violated the confidentiality requirements of § 43-21-151(1)(c) and refused to obey this law and this Court's orders when she routinely disseminated information t o Sundra Girard. Considering the fact that the contemnor in this instance is an attorney at law, this Court must take such violations very seriously. There are numerous instances of Attorney Spencer's violation of this law and this court's orders requiring confidentiality. Attorney Spencer asserted on several occasions that § 43-21-151(1)(c) had no application to this case and she disregarded its provisions when it came to conveying information to Sundra Girard. She also disregarded this court's specific orders requiring confidentiality. Attorney Spencer copied Sundra Girard on matters concerning this confidential civil action when she sent her an e-mail with attachments of

confidential documents from this case. Attorney Spencer admitted giving to Sundra Girard a copy of this court's Bench Ruling of February 10, 2006, and shortly thereafter a perverted report of what had occurred in this civil action appeared on the internet. This Court cannot take this matter lightly and appropriate punishment should be levied against Attorney Karen H. Spencer for her willful disregard for the confidentiality provisions of § 43-21-151(l) (c) and this Court's orders.

This Court has required that Attorney Spencer's attorney, Cynthia J. Speetjens review Attorney Spencer's file and to make a report about the transfer of confidential information about this case to Sundra Girard from February 2 , 2006 through February 28, 2006. This order was appealed to the Supreme Court and the appeal was dismissed. This Court has yet to receive a copy of that report, and this court does retain jurisdiction of the issue of contempt on the part of Attorney Spencer in her relay of confidential information to Sundra Girard.

This court does find that Attorney Karen H. Spencer is guilty of contempt of court for her violation of this court's order requiring confidentiality, and is in violation of § 43-21-151(l) (c) and should be punished in accordance with § 43-21-153.

For dissemination of confidential information from this civil action to Sundra Girard prior to the commencement of the pro-trial motions and the trial on the merits, Attorney Karen H. Spencer shall be incarcerated in the Clarke County Jail for a period of ninety days, commencing May 19, 2006. She shall report for incarceration at 8:00 a.m. on May 19, 2006 and the sheriff shall release her following the ninetieth day of incarceration. In addition, Attorney Karen H. Spencer shall pay to the Clarke County Clerk a fine in the sum of

$500.00, said fine to be paid no later than May 19, 2006. For dissemination of confidential information from this civil action to Sundra Girard after the trial on the merits, specifically the Bench Opinion rendered February 10, 2006, Attorney Karen H. Spencer shall be incarcerated in the Clarke County Jail for a period of ninety days, said sentence to run concurrently with the sentence imposed supra, commencing May 19, 2006. She shall report for incarceration at 8:00 a.m. on May 19, 2006 and the sheriff shall release her following the ninetieth day of incarceration. In addition, Attorney Karen H. Spencer shall pay to the Clarke County Clerk a fine in the sum of $500.00, said fine to be paid no later than May 19, 2006.

VIOLATION OF ORDER REGARDING SUBPOENAS

This Court specifically required Attorney Spencer to submit subpoenas duces tecum to the court for approval prior to their being issued. This order was entered to avoid oppressive subpoenas duces tecum, and also to avoid the dissemination of confidential information from this civil action. Attorney Spencer requested permission of this court to issue her trial subpoenas on December 5 , 2005:

"MS. SPENCER: May I go ahead and have my trial subpoenas issued?

THE COURT: Okay. What all are they for?

MS. SPENCER: Just for a variety of individuals to -

THE COURT: Have you given them to Mr. Parrish?

MS. SPENCER: No, I have not.

THE COURT: I mean, we had some problems with subpoenas before. These are just witness subpoenas?

MS. SPENCER: These are witness subpoenas."

Although Attorney Spencer is an officer of the court and is bound to not knowingly make a false statement of material fact or law to a tribunal, she stood in open court and described the subpoenas she was about t o issue as "witness subpoenas. She did issue witness subpoenas that day, but she also issued the following subpoenas duces tecum:

(1) Trial Subpoena and Subpoena Duces Tecum for Jackie Odom of the Department of Human Services. The subpoena included this language: "You shall not fail under the penalty provided by law to comply with this Subpoena and Subpoena Duces Tecum and produce documents attached on Exhibit A." Exhibit A was a separate sheet of paper on which was typed the following language: "The July 2004 investigation file maintained by the DHS concerning Kayleigh Chandler's sexual abuse which occurred in approximately June and July 2004, including but not limited to the investigation, any conclusions, the original or a copy of Kayleigh's note and drawing of an erect penis which stated, 'For Mamma's eyes only; my privates hurt real bad', and all other documents contained in the file and a copy of the DHS file concerning Kayleigh and Michael Chandler being placed in foster care."

Trial Subpoena Duces Tecum to Quitman School District.

(3) Trial Subpoena and Subpoena Duces Tecum to John Webb O'Bryant, MDHS Regional Director. This subpoena duces tecum contained the language o f "Exhibit A" above in the text of the subpoena, on the front page.

(4) Trial Subpoena and Subpoena Duces Tecum to Lisa Robinson of the Department of Human Services. This

subpoena duces tecum contained the language of "Exhibit A" above in the text of the subpoena, on the front page

(5) Trial Subpoena and Subpoena Duces Tecum to Brunette Jones of the Department of Human Services. This subpoena had attached the Exhibit A described above.

I n issuing the above subpoenas duces tecum, Attorney Spencer made a material misrepresentation to this court and violated this court's order that Subpoenas Duces Tecum be submitted to the Court for review and approval prior to their issuance. By including the graphic language in Exhibit A, she also disseminated confidential information from this civil action in violation of §43-21-151(1) (c).

She exposed that information not only to the subpoenaed witness, but also the process server hired to serve the subpoenas. Such conduct on the part of an attorney at law cannot go unpunished. It should also be noted that the "drawing of the erect penis" is Attorney Karen Spencer's interpretation of Kayleigh's drawing on the note she gave her mother. Donna Moore, the first counselor that talked to Kayleigh, reported that the child described the drawing as a girl with long hair. Kayleigh had drawn tears on the girl's face, and was afraid she would upset her mother so she blacked out the face and drew smiley faces around the drawing.

The Subpoena Duces Tecum issued for the Quitman School District did violate this court's order because it was not submitted for review and approval, but it did not contain confidential information from this case. Attorney Spencer is found to be in contempt of this Court for issuing this subpoena and should be and hereby is fined

the sum of $100.00 for her contempt of court. Said payment shall be made to the Chancery Clerk of Clarke County no later than May 19, 2006.

The Subpoenas Duces Tecum issued for Jackie Odom, John Webb O'Bryant, Lisa Robinson, and Brunette Jones were issued in violation of this Court's order requiring review and approval before issuance of subpoenas duces tecum, and also violated the confidentiality provisions of § 43-21-151(l) (c) . On each of these four instances of contempt and violation of § 43-21-151(1)(c), this Court does find that Attorney H. Spencer shall be incarcerated in the Clarke County Jail for a period of ninety days on each count, said sentences to run concurrently with the previously adjudicated incarceration. In addition, Attorney Karen H. Spencer shall pay a fine of $500.00 for each such subpoena issued in violation of this Court's orders regarding issuance of subpoenas duces tecum, the confidentiality orders, and the violation of § 43-21-151(1)(c).

Said fines of $500.00 each totaling $2,000.00 shall be paid to the Chancery Clerk of Clarke county no later than 5:00 p.m. on May 19, 2006.

RULES OF PROFESSIONAL CONDUCT

This Court has been requested to refer this matter to the Mississippi State Bar for appropriate disciplinary proceedings. It is clear that Attorney Spencer has made material misrepresentations to this court. Although her client stated in open court that she brought her computer with her from Texas when asked about it on September 20, 2005, Attorney Spencer filed a statement in response to a subpoena for Donna Chandler's computer that Donna Chandler does not own a computer. Attorney Spencer also made a material misrepresentation to the court when

she stated that the subpoenas to be issued December 5, 2005 were witness subpoenas. Attorney Spencer also modified an order ("natural parents" changed to "mother") and failed to include crucial language about legal custody remaining with DHS in the December 5, 2005 order.

This court has found Attorney Spencer to be in contempt and has issued serious fines and incarceration penalties. The Court is mindful that these penalties will have a significant effect on Attorney Spencer. However, her conduct in this litigation has been so egregious that the Bar should be notified concerning Attorney Spencer's conduct. A copy of this Opinion shall be mailed to the Bar's complaint counsel under seal, for appropriate consideration.

ATTORNEY SPENCER'S FILE

This court has also been requested to review Attorney Spencer's file for possible evidence of her complicity in the disappearance of her client and the minor children . This is a very serious request, and it is also a very serious matter when an attorney may be implicated in the commission of a crime. This court has already required Attorney Spencer's attorney, Attorney Speetjens to make limited reviews of Attorney Spencer's file and to make reports to the Court. One such report is still outstanding.

Attorney Spencer has made misrepresentations to this Court in violation of Mississippi Rules of Professional Conduct, Rule 3.3(a)(1). Should a lawyer have information concerning a client's commission of a crime, that information is excepted from the confidentiality requirements of Rule 1.6. This Court has not wanted to review Attorney Spencer's file. As stated previously, Attorney Spencer is an officer of the court and has a duty

of candor toward the tribunal. Due to the fact that Attorney Spencer has been found to have violated these rules and due to the fact that very serious allegations and concerns have been registered concerning Attorney Spencer's possible complicity in the disappearance of Donna Chandler and the minor children , the court finds that it is appropriate for this court to appoint an impartial attorney as Special Guardian ad Litem for the children in this regard.

Therefore, this Court does appoint Honorable James E Williamson as a Special Guardian ad Litem for Kayleigh and Michael Chandler. Attorney Spencer shall post with the Chancery Clerk the sum of $5,000.00 as court costs to cover the fees of the Special Guardian ad Litem. Said sum shall be posted by Attorney Spencer with the Chancery Clerk of Clarke County no later than May 19, 2006. Attorney Spencer shall surrender her file to the Special Guardian ad Litem no later than May 19, 2006.

The Special Guardian ad Litem shall review the attorney file of Attorney Spencer for any and all information which may shed light on the location of Kayleigh and Michael Chandler and shall report such information to the court and shall also report any other items which might be of interest to this court in his report. He shall also determine if Attorney Spencer was in any way involved in the obtaining of passports for the minor children. Said passports were obtained with the forged signature of David Chandler shortly after Attorney Spencer became involved in this case. The attorneys of record shall fully cooperate with the Special Guardian ad Litem so that he may fulfill his duties as expeditiously as possible.

Attorney Kramer shall meet with Attorney Williamson and shall prepare a separate order setting out the duties to

be performed by Attorney Williamson. Said order need not be presented to Attorneys Spencer and Parrish. It will be reviewed by the court and entered when it meets the court's requirements.

In addition, this Court has been requested to require Attorney Spencer to disgorge the fees paid to her so that monies can be made available for the search for the minor children. This court does find that it is reasonable to require Attorney Spencer to account for all fees paid to her by Donna Chandler and Sundra Girard so that the Court can make a determination of whether any such disgorgement should be required. Said accounting of fees paid shall be filed with this Court no later than May 19, 2006.

The cost of transcription will be assessed to Attorney Karen H. Spencer and shall be paid to the court reporter within ten days of receipt of copy of Memorandum Opinion and Judgment.

RENDERED this the 18th day of April 2006.

s/Sarah P. Springer
CHANCELLOR